

Order below exhibit 6

1. The brief facts of the plaintiffs' application are as under:
That, the plaintiff and defendant are members of a family wherein defendant is grandfather of plaintiff. That, the father of plaintiff who happens to be son of defendant, has deserted the plaintiff and her mother for no reason. Presently, the plaintiff lives a deserted life. The suit property mentioned in the suit are ancestral property in which the plaintiff has also a birth right. The revenue record of the suit property bears name of defendant and is in joint ownership of them. The suit property is ancestral property and, therefore, the plaintiffs have right in the same as she is a coparcener. The plaintiff entertains suspicion that the suit property might be sold or transferred to someone and if it happens, the plaintiffs' interest in the suit property would fail. Therefore, the present suit is filed seeking declaration that the plaintiffs' have right in the suit property and a perpetual injunction that defendants should be restrained from transferring or creating charge over the suit property and present application is filed seeking interim protection during the pendency of the suit. They have further stated that they have a prima-facie case and balance of convenience also lies in their favour. Hence, urged that the temporary injunction be granted.

2. The defendant has been served through summons, he appeared before the court and filed written statement and reply. He have stated that the allegations made in the plaint are false. The suit is bad for non-joinder of necessary party. all the daughters of Punjabhai Jerambhai has not been joined in the suit. Merely, making any affidavit before revenue authority does not operate as relinquishment of their rights which they have as being a coparcener. The plaintiff is a physiotherapist and does job in a hospital at Keshod. He has no intention to sell or transfer the suit property and the allegations made by the plaintiff in the plaint with regard to probable transfer of the property is totally false and concocted. The property is ancestral property, therefore, the plaintiff has no right to file the present suit. The other heirs of Punjabhai Jeramanbhai and defendant has not been joined in the suit. The plaintiff does a job and earns herself. There is no likelihood of her being put to severe financial restraint if the injunction is not granted. In fact, no loss is going to happen to her because the defendant does not want to sell or transfer the

suit property. The plaintiff has no prima facie case, balance of convenience is also not in her favour, hence, urged that the application be rejected.

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

Sr.No.	Description of documents	Mark
1.	True copy of AADHAR of plaintiff	5/1
2.	Village form no. 8-A of defendant's land.	5/2
3.	Village form no. 7/12 of defendant's land.	5/3
4.	Copy of entry no. 861 in the village form no. 6 of the defendant's land.	5/4
5.	Copy of entry no. 3421 in the village form no. 6 of the defendant's land.	5/5
6.	Copy of entry no. 3768 in the village form no. 6 of the defendant's land.	5/6
7.	Copy of entry no. 3772 in the village form no. 6 of the defendant's land.	5/7
8.	Copy of entry no. 5125 in the village form no. 6 of the defendant's land.	5/8

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.

7. The plaintiff has filed written arguments in support of her contention at exhibit 15. The written arguments are jsut a copy of the plaint. The defendant has filed his written arguments vide exhibit 16 and has relied upon the some pronouncments of constitutional courts which are read and considered while arriving at any decision in this matgter.

-:: REASONS ::-

8. **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 defendant who is grand father of plaintiff. Hence, plaintiff being a daughter of a coparcener, as per the Hindu law, she is prima facie has share in the ancestral property of defendant. 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 she has suspicion that the defendant would sell or transfer the suit property. On the other hand, the defendant has denied to have any such intention. 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. Even if the property is sold, it would not cause any irreparable loss to the

plaintiffs as in that case they could always recover the value of their respective shares. So far as the question of balance of convenience is concerned, when there is no question of likelihood of transfer of property by defendant, there does not arise question of convenience and inconvenience to the parties.

8.1 Further, in the case of Sushil Kumar & Anr vs Ram Prakash & Ors 1988 AIR 576, wherein the facts were: The defendant-respondent No. 1, Ram Prakash as Karta of joint Hindu family executed an agreement to sell the suit property bearing for a consideration of Rs.21,400 and he received a sum of Rs.5,000 as earnest money. As the respondent No. 1 refused to execute the sale deed, the defendant No. 2, Jai Bhagwan instituted a suit No 570 of 1978 in the court of Sub-Judge, 1st Class, Kaithal for specific performance of the agreement to sell and in the alternative for a decree for recovery of Rs. 10,000. In the said suit the appellant Nos 1 and 2 and the respondent No. 11 who are the sons of defendant-respondent No. 1 made an application for being impleaded. This application however, was dismissed. Thereafter the 3 sons of defendant No. 1 as plaintiffs instituted Civil Suit No 31 of 1982 in the Court of Sub-Judge, IInd Class, Kaithal for permanent injunction stating inter alia that the said property was joint Hindu Family coparcenary property of the plaintiffs and defendant No 1 that there was no legal necessity for sale of the property nor it was an act of a good management to sell the same to the defendant No. 2 without the consent of the plaintiffs and without any legal necessity. It was, therefore, prayed that a decree for permanent injunction be passed in favour of the plaintiffs and against the defendant No 1 restraining him from selling or alienating the property to the defendant No. 2 or to any other person and also restraining defendant No. 2 from proceeding with the suit for specific performance pending in the civil court. The Hon'ble Supreme Court, after in depth deliberation upon the issue, observed:

" At the outset it is to be noticed that in a suit for permanent injunction under [section 38](#) of the Specific Relief Act by a coparcener against the father or Manager of the Joint Hindu family property, an injunction cannot be granted as the coparcener has got equally efficacious remedy to get the sale set aside and recover possession of the property. Sub-Section (h) of [Section 38](#) of Specific

Relief Act bars the grant of such an injunction in the suit. Secondly, the plaintiff respondents brought this suit for permanent injunction restraining their father, the defendant No. 1, from selling or alienating the property to the defendant No. 2 or any other person and also restraining the defendant No. 2 from proceeding with the suit for specific performance of the agreement to sell pending in the civil court. Thus the relief sought for is to restrain by permanent injunction the Karta of the Joint Hindu Mitakshara Family, i.e. defendant No. 1, from selling or alienating the house property in question. The defendant No. 1 as Karta of the joint Hindu family has undoubtedly, the power to alienate the joint family property for legal necessity or for the benefit of the estate as well as for meeting antecedent debts. The grant of such a relief will have the effect of preventing the father permanently from selling or transferring the suit property belonging to the joint Hindu Undivided Family even if there is a genuine legal necessity for such transfer. If such a suit for injunction is held maintainable the effect will be that whenever the father as Karta of the Joint Hindu coparcener property will propose to sell such property owing to a bona fide legal necessity, any coparcener may come up with such a suit for permanent injunction and the father will not be able to sell the property for legal necessity until and unless that suit is decided.....

We, of course, make it clear that in case of waste or ouster an injunction may be granted against the Manager of the joint Hindu family at the instance of the coparcener. But nonetheless a blanket injunction restraining permanently from alienating the property of the joint Hindu family even in the case of legal necessity, cannot be granted."

Hence, as per the observation made by the Hon'ble Apex Court, there cannot be a blanket injunction restraining permanently alienating the property of the joint Hindu family. In the case of waste or ouster such an injunction can be granted, but in the present case, there is no circumstance which show that the property is likely to be wasted or the plaintiff's right would be ousted. Hence, this court is of the view that in spite of proving that they have a prima

facie case the plaintiffs have failed to prove that they would suffer irreparable loss if the injunction is not granted. 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 15th of April, 2026.

Date:15/04/26

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