



Received on 05/05/2025
Registered on 05/05/2025
Decided on 30/04/2026
Duration Y. M. D.

IN THE HON'BLE COURT OF 4TH ADDL. DISTRICT JUDGE
KHEDA AT NADIAD.

Misc. Civil Appeal No.24/2025

Exh.: ____

APPELLANTS:~

(Orig. Defendant Nos. 1 to 10)

Heirs of deceased

Bhulabhai Mathurbhai

- (1) Madhuben D/o. Shanabhai Bhulabhai
Age: 67 Yrs., Occup.: Household,
- (2) Bharatbhai Ramanbhai
Age: 47 Yrs., Occup.: Agriculture,
- (3) Savitaben D/o. Ramanbhai Shanabhai
Age: 44 Yrs., Occup.: Household,
- (4) Kantaben D/o. Ramanbhai Shanabhai
Age: 42 Yrs., Occup.: Household,
- (5) Madhuben Wd./o. Kanubhai Shanabhai
Age: 65 Yrs., Occup.: Household,
- (6) Kapilaben D/o. Kanubhai Shanabhai
Age: 45 Yrs., Occup.: Household,
- (7) Shardaben D/o. Kanubhai Shanabhai
Age: 44 Yrs., Occup.: Household,
- (8) Kailashben D/o. Kanubhai Shanabhai
Age: 44 Yrs., Occup.: Household,
- (9) Ganeshbhai Kanubhai
Age: 35 Yrs., Occup.: Agriculture,
- (10) Dineshbhai Ramanbhai Zala
Age: 49 Yrs., Occup.: Agriculture,
himself and Power of Attorney Holder of
Respondent Nos. 1 to 9
All Residence: Mu.: Kani, Ta.: Mahemdavad,
Dist.: Kheda.

Versus**RESPONDENTS:~****(Orig. Plaintiffs)****(1) Heirs of deceased
Manibhai Bhaijibhai**

(1/1) Rukhiben Wd./o. Manibhai Bhaijibhai Parmar
Age: 69 Yrs., Occup.: Household,

(1/2) Kapilaben D/o. Manibhai Bhaijibhai Parmar
Age: 56 Yrs., Occup.: Household,

(1/3) Kantaben D/o. Manibhai Bhaijibhai Parmar
Age: 45 Yrs., Occup.: Agriculture,

(1/4) Jalambhai Manibhai Parmar
Age: 43 Yrs., Occup.: Agriculture,

(1/5) Badarbhai Manibhai Parmar
Age: 40 Yrs., Occup.: Agriculture,

**(2) Heirs of deceased
Punjabhai Bhaijibhai**

(2/1) Mukeshbhai Manubhai Baraiya
Age: 36 Yrs., Occup.: Agriculture,

(2/2) Lalabhai Manubhai Baraiya
Age: 26 Yrs., Occup.: Agriculture,

(2/3) Govindbhai Punjabhai Parmar
Age: 48 Yrs., Occup.: Agriculture,

(2/4) Munniben @ Menaben
Wd./o. Bhalabhai Punjabhai Parmar
Age: 48 Yrs., Occup.: Household,

(2/5) Vishnubhai Bhalabhai Parmar
Age: 39 Yrs., Occup.: Agriculture,

(2/6) Vinubhai Bhalabhai Parmar
Age: 37 Yrs., Occup.: Agriculture,

(2/7) Jagabhai Punjabhai Parmar
Age: 50 Yrs., Occup.: Agriculture,
himself and power of attorney holder of
Respondent Nos. 1/1 to 2/6
All Nos. 2/1 to 2/7 Residence:
Mu.: Raska, Ta.: Mahemdavad, Dist.: Kheda.

<u>Appearance:-</u>		
For the Appellant	:	Ld.Advocate Mr. A.S. Mali
For the Respondents	:	Ld.Advocate Mr. N.A. Dabhi

An Appeal under Order-43 Rule -1 (r) of C.P.C.

~: J U D G M E N T :~

(1) Being aggrieved and dissatisfied with the order passed in Regular Civil Suit No.4/2023 on 14/02/2024 by allowing the application below Exh.5 for interim injunction by Ld. Addl. Civil Judge, Mahemdavad the present appellants - Orig. defendants have filed present Misc. Civil Appeal, seeking relief of ad-interim injunction under Order 43 Rule-1(r) of C.P.C.

(2) The brief facts of the Civil Suit are as follows:

The plaintiff has filed the Regular Civil suit regarding Block No.111, area 2-30-68 H.Are.Sq.Meter. and Block No.589, area 0-12-14 H.Are.Sq.Mt. of Khata No.153 situated at Raska village, Mahemdavad Taluka. They have stated that the plaintiffs are the heirs of Shanabhai Ajubhai, and the disputed property was running in the names of Bhulabhai Masurbhai and Shanabhai Ajubhai. In the year 1946, Bhulabhai Masurbhai gave the disputed property as a gift to Bhaijibhai Kawaaji, who is among the heirs of Shanabhai Ajubhai. Therefore, by Mutation Entry No.928 dated 14/12/1946, Bhulabhai Masurbhai's name was deleted. Thereafter, as Bhaijibhai Kawabhai, the recipient of the gift, passed away, the name of Shanabhai Ajubhai was entered as guardian of the plaintiff's ancestor Pujabhai Bhaijibhai. And from then on, the disputed property belongs to the plaintiffs. The

plaintiffs further state in their suit that in the year 1981, when consolidation of the disputed property took place, due to an error by the Revenue Officer, Bhulabhai Mathurbhai was written in place of Bhulabhai Masurbhai. Taking undue advantage of this, the defendants in this case, who are the heirs of Bhulabhai Mathurbhai, a resident of Kanij Village, raised an objection against Mutation Entry No.3954 regarding that heirship, and upon it being allowed, the said entry was cancelled. The defendant made another false attempt to enter their own name in the disputed property and filed Heirship Application No. 09/2021 in the Mahemdavad Court, which was granted by the Mahemdavad Civil Court by order. The reason for filing the present suit is that due to the order of the Mahemdavad Court, Mutation Entry No.4374 dated 28/11/2022 was entered, which has given rise to a dispute from then. And the defendants, by merely taking advantage of the error made by the Revenue Officer in the name, have caused damage to the plaintiff's right to ownership of the disputed property. Therefore, the present suit has been filed to declare the plaintiffs as the owners of the disputed property and for a permanent injunction order. Along with this, through Exh-5, an interim injunction has been sought that during the pendency of the suit, the defendants should not sell the disputed property, or create any encumbrance on the disputed property, or cause any obstruction or hindrance to the plaintiff's possession. Further stated that the plaintiffs have prima facie case and convenience is in favour of the plaintiffs and it is prayed that injunction

order against the defendant may be granted and the present application may be allowed.

- (3) Defendants duly served with the notice in the suit and injunction application filed by the plaintiff and defendants No.1 to 9 appeared through their Power of Attorney Holder Defendant No.10 and he appeared through his Ld.advocate and filed written statement for all vide Exh.16, wherein, the defendant denied to the averment in the suit and stated that the plaintiffs do not have possession over the disputed property and that the plaintiffs suppressed the material facts on record. The defendants further state in their reply that if there was an error in the name during the consolidation proceedings, then the plaintiff should have filed a complaint before the Settlement Officer regarding the consolidation. Thus, the name of the defendant's ancestor has been entered vide Entry No. 1 dated 05/12/1981 from the consolidation that took place in the year 1981, which entry the plaintiff has not challenged till date. Further, in Entry No. 928, there is nothing mention regarding any survey number of the disputed property. Further, no evidence such as pedigree etc. has been produced showing that the plaintiff Shanabhai Ajubhai is the direct heir of Bhaiji Kawaji. Further, the plaintiff Bhaiji states in the suit that Kawaaji or Shanabhai Ajubhai is whose heir – regarding this, a contradictory statement has been given. Further, the Mahemdavad Court has followed proper procedure and given them Succession certificate and despite the plaintiffs knowing about it, the plaintiffs did not remain present in

the Court for that Succession process in Mahemdavad Court. The plaintiffs had earlier also filed Suit No. 88/2020 regarding this property, which was dismissed, and the plaintiff does not disclose this fact before the Court. Thus, the plaintiffs have suppressed the material facts and also as the plaintiff does not come before the Court with clean hands hence, prayed to dismiss the plaintiff's interim injunction application.

- (4) The present appellant - orig. defendant has preferred this appeal on account of being aggrieved by the order passed below Exh.5 application in Regular Civil Suit No.4/2023 on various grounds mentioned in appeal memo at Ex.1.

In Support of his appeal he has produced documentary evidence vide Exh.3- Mark-3/1 & Mark-3/2.

- (5) Notices duly served to the respondents in the present appeal and Respondents - orig. plaintiffs appeared through their Ld.advocate and filed his reply vide Exh.10, wherein he denied all the facts of the present appeal and stated that the present appellants have no prima facie case and he has stated that the all the facts mentioned in the present appeal are false and fabricated. Further, he has stated that the Ld.Trial Court has rightly appreciated the evidences on record hence, Ld. Trial Court has rightly passed an order hence, no interference is required and present appeal is required to be rejected with costs.

- (6) The Ld.Advocate for the appellants has produced his written arguments vide Exh.12, wherein he denied all the facts mentioned in the written statement of the respondents

and stated whole facts as mentioned in their appeal. Further, they stated that they have obtained Succession Application No.09/2021 from the Principal Civil Court, Mahemdavad, and based on that information, the plaintiffs, i.e., the present respondents had received a cause of action to file Suit No. 04/2023 against them. Therefore, the Ld. Trial Court, having completely overlooked the provisions of Order-9, Rule-9 of C.P.C., which state that a suit barred by cause of action cannot be dismissed, has erred, and based on that, the interim order publicly declared is liable to be set aside. The reason is that their further clarification on that matter is that, as long as Civil Misc. Application No. 09/2021 is pending, they only have to state that, if information regarding the proceedings of the Succession case is given to the respondents in this case, then on 24/03/2022, in the Court of the Hon'ble Collector, Nadiad, in the reply filed in R.T.S. Appeal No. 25/2019, it has been clearly stated in Para No. 8 that "The applicant in this case has filed an application before the Ld. Principal Civil Judge, Mahemdavad, for obtaining a Succession certificate under Section-372 of the Indian Succession Act. Which is Civil Misc. Application No. 09/2021. In which also the applicant has not produced any evidence and at present also no judicial decision has been made on their application pending for obtaining a Succession certificate under Section 372 of the Indian Succession Act. Therefore, as the judicial decision is pending, his application may also be dismissed." That is, the respondent in that case had knowledge of the Civil Misc. Application No. 09/2021 filed by them applicants even before the final order in Civil Misc. Application

No.09/2021 was passed. Despite this, the opponents in that case did not file any objection of any kind in Civil Misc. Application No.09/2021, and the evidence regarding Civil Misc. Application No.09/2021 when they filed it, and thereafter notices were issued as per rules and since then it is in existence. Hence, respondents suppressed the material facts on record and trying to mislead the Hon'ble Court hence, present appeal is required to be allowed. In support of his arguments he has produced list of documents vide Exh.13 - Mark-13/1 to Mark-13/5.

- (7) The Ld.Advocate for the respondents has orally argued that the appeal filed by the appellants is barred by law because the appellants have not clarified in what manner the Ld. Trial Court's order is erroneous or illegal, nor have they produced any evidence to that effect. Despite the Trial Court having passed the order after hearing the submissions of both sides, the appellants have falsely stated before this Hon'ble Court that the order was passed without hearing them. The Ld. Trial Court, in its own order on the injunction application, has passed the order after properly evaluating and correctly interpreting all the evidence produced. Despite this, by stating false facts, this appeal has been filed, which can not said to be legal. The Ld. Trial Court has taken into consideration the Panchnama prepared by the Court Commissioner regarding the plaintiff's possession. According to it, on this disputed land, there are 10 houses, 4 temples, 2 water bores, a water trough, water tank, etc. owned by the plaintiff, this fact has been shown, yet, the appellants have

raised this matter before the Hon'ble Court in the form of an objection. Which is completely improper. The appellants have not produced a single piece of evidence in the Trial Court to refuse the fact of the plaintiff's possession. Further, if the appellants have possession, then as the original defendants, they have not produced a single piece of evidence to prove their own possession over the disputed land, which is well described in the order of the Ld. Trial Court. As per the Preliminary Order passed on 10/01/2023 the notices have been clearly served to the appellants hence, present appellants are trying to mislead the Hon'ble Court hence, order passed by the Ld. Trial Court is just and proper and no interference of this Court is required and present appeal is required to be rejected with costs.

(8) Considering the rival submissions of the parties to this appeal as well as record of Regular Civil Suit No.04/2023 following issues are required to be framed for the determination of this appeal.

(1) Whether the appellants can point out that impugned order passed in R.C.S. No. 04/2023 dtd.14/02/2024 is erroneous, capricious and perverse?

(2) What order and decree ?

(9) My findings of the above points of consideration, are as follows, the reasons for which are as under :

(1) In negative.

(2) As per final order.

-:: REASONS ::-

Issue No. 1:-

(10) The Ld.Advocate for the appellants has vehemently submitted that the Ld.trial Court has committed grave error by not considering legal facts, natural justice and not considering provisions of Civil Procedure Code. Thereby, he urged to allow the appeal and set aside the order passed below Exh.5 in Regular Civil Suit No.04/2023 dated 14/02/2024. He further submitted that the plaintiffs has filed suit for declaration and for permanent injunction and in support of an injunction application Exh.5 the plaintiffs has also relied upon the documentary evidence at Mark-3/1 to Mark-3/68 and Mark-23/2. Defendants have filed written statement at Exh.16, and merely denied the averments of the plaint of the plaintiffs. The plaintiffs have not proved all three ingredients for the relief of ad-interim injunction in his favour and, although the trial Court has allowed an application Exh.5 of the plaintiffs and committed grave error in not considering the documentary evidences produced by the appellants - orig. defendants. Therefore, they submitted that the injunction as prayed for in Exh.5 application is required to be rejected and Hon'ble Court may allow the present appeal.

(11) As against this, learned advocate for the respondents has submitted that the Ld. trial Court has passed just and proper order and orig. plaintiffs have prima-facie case and balance of convenience is also in favour of them and irreparable loss will be caused to the

plaintiffs if, injunction is not granted therefore, no interference of this court is required.

(12) Before dealing with the above said arguments of the said learned advocates, at this juncture, the ratio laid down by the Hon'ble Gujarat High Court in case of **Harshadkumar Kantilal Bhalodwala and Anr V/s Ishwarbhai Chandubhai Patel and Ors, reported in 2010(1) G.L.H 151**, is required to be considered at this stage, wherein it is held that:-

*"Para-9. Now, so far as the decisions relied upon by the learned Advocate for the respondent No. 1 herein original plaintiffs **Ramdev Food Products (P) Ltd. (supra)** and **Wander Ltd. (supra)** are concerned, even in the said decision also the Hon'ble Supreme Court has specifically observed that the Appellate Court can interfere with the order of the trial Court when it is found that discretion has been exercised by the trial Court arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunction. As observed herein above, in the present case while granting the injunction the learned Judge has ignored the settled principles of law regulating grant or refusal of interlocutory injunction i. e. prima facie case, balance of convenience and irreparable loss in terms of money. There is no prima facie case in favour of the original plaintiff. As stated above defendants No. 3 and 4 are the bona fide purchaser of the land in question after payment of full sale consideration and after public advertisement/ notice and when no objections were received and, therefore, the balance of convenience is in favour of the defendants No. 3 and 4.*

Also the ratio laid down by the Hon'ble Gujarat High Court in case of **Jasoda Indralal Vadhva V/s Hemendrabhai Kakulal Vyas and Ors, reported in 2009 (2) G.L.H. 437 (Division Bench)** is required to be considered at this stage, wherein it is held that:-

"Para-13. Granting of injunction is a matter of discretion. Balance of convenience and irreparable injury are triable issues and are required to be examined and positively found. It is settled law that while hearing appeal against discretionary exercise of powers by the trial Judge, while deciding the application under Order 39, Rule 1 and 2 of C.P.C. the appellate Court is not expected to interfere with the discretion, unless it is shown that power has been exercised arbitrarily, capriciously or in perversity and against the settled principles of law. Appellate Court is not expected to reassess the material and to reach a conclusion different than the one reached by the Court below. If the one reached by the Court was reasonably a plausible view, appellate Court would normally not be justified in interfering with the order. But, if the exercise of discretion in appeal is only on the ground that the matter has not received consideration at trial Court stage, then it would have come to a different conclusion and the appellate Court can interfere with the exercise of discretion of trial Court provided it is satisfied about prima facie strong case, balance of convenience and extreme urgency. "

- (13) Ordinarily, the Court would not interfere with the exercise of discretion in the matter of grant or refusal of temporary injunction by the trial Court and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the order of the Court under

scrutiny ignores the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below solely on the ground that if, it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in judicial manner, the fact that the appellate Court would have taken a different view may not justify interference with trial Court's exercise of discretion.

- (14) Looking to the order passed by the Ld.Trial Court, it appears that the Ld.Trial Court has rightly considered the provisions and also the facts and averments of the case and after evaluating the evidence on record at Mark-3/23, Entry No.682, according to which there is a note in the disputed property kept with the plaintiffs' forefather that it was given by Bhaiji Kawaji to Bhulabhai Masurbhai as a gift. Further, the plaintiffs states that the new Block No. 111 comprises old Survey Nos. 93, 96/1, 96/2 and 92/1. Keeping this fact in mind, if the note produced vide Mark-3/23 is perused, then old Survey No., Paiki Survey No. 96/1 does not appear. Whereas the plaintiffs have produced Village Form Nos.7/A & 12 of old Survey No. 96/1 vide Mark-3/8, wherein Shana Aju's name appears as the possessor. Similarly, the plaintiffs stated that new Block No.589 is formed of old Survey Nos. 583/2 and 583/5, but if the note produced vide

Mark-3/23 is perused, then old Survey No., Paiki Survey No.583/2 does not appear. Whereas the plaintiffs have produced Village Form Nos.7/A &12 of old Survey No. 583/2 vide Mark-3/13, wherein Shana Aju's name appears as the possessor. Further, it is also observed that on one hand, the plaintiffs state the fact that they are the heirs of Shana Aju, while in oral arguments it is stated that Shana Aju is the plaintiffs' uncle. Further, the plaintiffs have produced an Order of Collector Kheda vide Mark-3/30, wherein it is stated that the disputed property out of Block No. 111 includes old Survey Nos. 93, 96/1, 96/2 and 95/1, whereas the plaintiffs, in their suit stated that the disputed property in Block No. 111 includes 93, 96/1, 96/2 & 92/1 and in Collector's order nothing has been mentioned for Old Survey No.92/1. However, the Collector Kheda, considering that the defendant's heirs are not legal heirs and did not deem it proper to forcibly enter the defendant's Succession entry in the said order. Thus, the defendant's succession appears doubtful. Further, in the plaintiffs' case, the above inconsistencies that appear require evidence to be taken, and thus the plaintiffs appears to have a prima facie case and therefore it appears necessary to give protection to the plaintiffs at the interim stage. Further, the plaintiff has produced revenue receipts at Mark- 3/39 to 3/55, house tax receipts from the Panchayat, and electricity bill xeroxes. All these proofs, along with the Panchnama for the disputed property Block No. 111 produced by the plaintiffs vide Mark-23/2, have been produced, and upon perusal of these along with

other evidence produced by the plaintiffs, it presently appears that the plaintiffs have possession over the said property. On the other hand, no evidence has been produced from the defendants' side to show that they have possession over the disputed property. Thus, in this situation, if the injunction order as prayed for by the plaintiffs is not granted, and if the plaintiffs' possession is taken away, then in that case the balance of convenience also lies in the plaintiffs' favor.

(14.1) Further, an argument has been made from the defendants' side that the plaintiffs have suppressed the material facts, in this regard, the defendants have drawn the Court's attention to the fact that the plaintiffs had filed a suit regarding the present disputed property in Mahemdavad Court vide R.C.S. No. 88/2020, which was dismissed for default by that Court, and the defendants have produced the suit application and dismissal order of Suit No.88/2020 vide Mark-12/2 and after perusing of the documents the Ld. Trial Court has also rightly stated that that the plaintiffs had filed that suit regarding the present disputed property against the defendant Dinesh Ramanbhai Zala, who is power of Attorney Holder of all the defendants in the present case. The prayer in Suit No. 88/2020 was also similar, but the parties in Suit No.88/2020 were different and the parties in the present suit are different. Further, the Succession Misc. Application No. 09/2021 filed by the defendants in Mahemdavad Court was granted on 01/08/2022 hence, the cause of action for the present suit had arisen, which

does not appear that the suit is barred by Order 9 Rule 9 of C.P.C. Further, the said order was challenged by the plaintiffs before the District Court, and the question of Succession Application was under consideration before the Hon'ble District Court, therefore no other specific comment is being made on it. Moreover, it is also rightly observed that a submission has been made from the defendants' side that if the plaintiffs' names have been entered due to an error in consolidation, then a statement should have been made before the Settlement Commissioner, but at the present stage, the defendants' said argument does not appear acceptable. Because at the time of cancelling the defendants Succession entry, the Collector and other Revenue Officers have accepted the fact that there was an error in the name. Further, the defendants have not challenged the said order before the Appellate Revenue Authority. Further, under the provisions of the Prevention of Fragmentation and Consolidation Act, and the Consolidation Act, any such subject matter should have been raised before the Settlement Commissioner – no such argument has been presented along with legal provisions. In such circumstances, if the plaintiffs not not granted protection, it appears there is a full possibility that the plaintiffs may suffer irreparable loss which cannot be compensated in terms of money.

- (15) Hence, order passed by the Ld. Trial Court is proper and well reasoned and after considering the evidence on record as well as provisions of law therefore,

the order passed by the Ld. Trial Court cannot be said erroneous, capricious and perverse. Therefore, the trial Court has rightly allowed application Exh.-5 and Trial Court has also given valid and proper reasons. Therefore, no interference of this Court is required. Therefore, reply of Issues No.1 is given in the negative and for the Issue No. 2 following final order is passed.

-. FINAL ORDER :-

- [1] Misc. Civil Appeal No.24/2025 is hereby rejected.
- [2] Order passed in Regular Civil Suit No.4/2023 on 14/02/2024 by allowing the application below Exh.5 for interim injunction by Ld. Addl. Civil Judge, Mahemdavad is hereby confirmed.
- [3] No order as to costs.

Signed and Pronounced on this 30th Day of April, 2026

Date:30/04/2026 (MUKESHKUMAR JAYANTILAL BRAHMBHATT)
Place: Nadiad 4th Additional District Judge
Kheda at Nadiad
Code No.GJ00754