



IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC, MAHUDHA
DIST: KHEDA

Regular Civil Suit No. 27/2020

Ranchhodbhai Kalidas @ Kalabhai Katariya & Another

...Plaintiffs

Versus

Ramanbhai Gangabhai Katariya & Others

...Defendants

Appearance:

Ld. Advocate Mr. S. T. Patelia for the Plaintiffs

Ld. Advocate M. L. Dabhi for the Defendant Nos. 2/1 to %

Ld. Advocate G. K. Makwana for the Defendant No. 1

**Order below Exh. 5 filed by the Plaintiff under Order 39 Rule 1,2 of
the Code of Civil Procedure.**

1. The present application has been filed by the Plaintiff vide Exh. 5 under Order 39 Rule 1, 2 seeking injunction against the Defendants herein and prayed the following reliefs:-
 - (A) To restrain the Defendants from interfering in using the subject property by the Plaintiffs and further to restrain the Defendants his agents, servants, assignees from

transferring, selling, mortgaging, gifting the property in dispute i.e. City Survey No. 1094, Village: Alina, Mahudha to third party till the final disposal of the present suit.

(B) Other appropriate reliefs as this Court deems fit.

2. Factual matrix of the case:-

A. It is the case of the Plaintiffs that in the Alina village, in the Tekla Faliya locality, the small ancestral residential land was purchased by the Plaintiff's father, Shri Kala Bhana Bin Mula. The sale deed for this property was executed on 07/04/1942. Therefore, the said property is the ancestral property of the Plaintiffs, and accordingly, they have an inheritable right over it. On this land, the Plaintiffs and their brother, Naranbhai-father of Defendant Nos. 2/2 to 5 have jointly constructed a permanent house. The boundaries of the property are as follows:

- North: Property of Shobhaben Ramprasad Pandit
- South: Public road
- East: Public road
- West: Public road

B. It is further submitted by the Plaintiffs that The aforesaid property, described by its boundaries, was purchased by their father. During the City Survey conducted at village

Alina, no notice of "Rights Inquiry" was served upon the Plaintiffs, and since none of the concerned parties were present, the property was, for want of evidence, recorded in the name of the Government. It was assigned City Survey No. 1094. Against this order, Defendant No. 1 and the Plaintiffs' deceased brother, Naranbhai Kalidas Katariya, filed C.T.S. Appeal No. 42/2005. In that appeal, the matter was remanded and Remand Case No. 23/2006 was conducted. In the remand proceedings, the City Survey Superintendent ordered that the names of Ramanbhai Gagabhai Katariya and Naranbhai Kalabhai Katariya be entered in the record. However, the Plaintiffs were never informed about this order. The subject property was purchased by the Plaintiffs' father and the Plaintiffs and late Naranbhai Kalabhai Katariya jointly constructed a house upon it and have been continuously using and enjoying it. After knowing about the aforesaid order, the Plaintiffs filed a C.T.S. Appeal before the Deputy Collector, which was partly allowed and the matter was remanded. Thereafter, the City Survey Superintendent confirmed the previous order, against which the Plaintiffs again preferred an appeal. The said revenue proceedings are still pending. Thus, the Plaintiffs have a legal inheritable right in the said property. However, without their knowledge, Defendant No. 1 and late Naranbhai have managed to get their names mutated.

Since the property was purchased the Plaintiffs' father, Defendant No. 1—who is Plaintiffs' uncle's son has absolutely no right or title in the said property. Despite this, due to his name being wrongly shown as a disputant in the appeal, his name has been illegally mutated in the revenue record, although Defendant No.1 has no share, right, or concern whatsoever in this property.

C. It is further submitted by the Plaintiffs that they are not residing in the village, but their agricultural lands are situated at Alina, and for agricultural work, they frequently visit Alina. Whenever they visit, they use the disputed property and often store agricultural produce there. As their names were not mutated in the revenue record and they were pursuing proceedings, the Defendants have become hostile towards the Plaintiffs. Taking advantage of the Covid lockdown period, the Defendants locked the disputed property. The Plaintiffs came to know about this a week ago when they visited Alina. When they approached the Defendants and asked them to unlock the premises or hand over the keys, they became aggressive and said that the property now belongs to them only, that the Plaintiffs have no right over it, and that the key will not be given to Plaintiffs. Thus, as the Defendants have denied the legal

rights of the Plaintiffs, the Plaintiffs are Constrained to file the present suit.

3. **Court Proceedings:-**

Upon service of summons the Defendants have appeared before this Court through their Ld. Advocate. The Defendant No. 1 has filed W.S./reply at Exh-22 and the Defendant Nos. 2/1, 2/4, 2/5 filed a written statement vide Exh. 13 and other Defendants have adopted the reply vide pursis at Exh-19. Thereafter since both the parties agreed to argue the present application vide Exh. 5, this Court has taken up the present matter for hearing of Exh. 5 application. The Plaintiffs have filed written arguments vide Exh-28 in support of their application.

4. **Written statement of the Defendants:-**

A. The Defendant No. 1 and the Defendant Nos. 2.1 to 2.5 have filed similar written statements at Exh.13 and 22 wherein the Defendants have denied the allegations made by the Plaintiffs and submitted that the property bearing City Survey No. 1094 of situated at village Alina, admeasuring 81.31 sq. mtrs. of tenure category "A", is the ownership and possession-based property of the Defendants. Their residential houses are also situated on the said property. The property was originally in their ownership and possession;

however, at the time when the City Survey Scheme came into force in village Alina and verification of rights of all properties was undertaken, the Defendants were not present at the site. Consequently, the concerned authority erroneously recorded the suit property as Government property. Therefore, they filed City Survey Appeal No. 42/05 before the Government authorities in which vide order dated 24-04-2006, their appeal was allowed and the matter was remanded to the Inquiry Officer, Alina. Pursuant to the said order, the City Survey Superintendent and the Additional Deputy Mamlatdar conducted City Survey Remand Case No. 23/06. In that case, the Mamlatdar carried out a site inspection, obtained statements of neighbouring occupants and passed an order directing that the suit property be entered in the names of the Defendants. Since then, the revenue records reflect their names in respect of the suit property. Thus, the suit property is their lawful ownership and possession-based property, and the Plaintiffs have no right, share, interest, or concern of any kind in the suit property.

- B. It is further submitted that the document produced by the Plaintiffs does not contain any property number or Gram Panchayat house number. Further, the document produced is an unregistered document. No entry was mutated on the

basis of such an illegal document in the revenue records till today. The Plaintiffs have thus created a false and fabricated document, which is prima facie illegal. The Plaintiffs have not produced any written evidence to show that the said document pertains to the suit property. Hence, the Plaintiffs have filed the suit with incomplete and insufficient evidence, and therefore the suit as well as the injunction application are liable to be dismissed. Thus, the Plaintiffs have no recorded right nor any right, share, or interest of any kind in the suit property. Even then, the Plaintiff, by some means or the other, is attempting to take away the suit property from the Defendants. By suppressing true facts, the Plaintiffs have filed the present suit and injunction application, which are liable to be dismissed with costs and the Plaintiffs may be directed to pay special costs of Rs. 50,000/- to the Defendants.

5. Counter affidavit of the Plaintiffs:-

The Plaintiffs have filed a counter affidavit vide Exh-24 and reiterated the facts stated in the Plaint. The Plaintiffs have further submitted that the Defendants can not claim their sole right over the suit property only on the basis of the revenue records since the revenue records are not proof of title but only for fiscal purpose.

6. **Arguments by the Parties:-**

A. The Plaintiffs have filed written arguments vide Exh-28, since the same is part of record I restrain myself to reiterate in order to avoid repetition. The Plaintiffs have submitted that the subject property was purchased by the father of the Plaintiffs and late Naranbhai Katariya and therefore they have ancestral rights over the suit property. Further the Defendants are claiming their sole right merely on the basis of the revenue entries which are not proof of title. Therefore the Plaintiffs have a prima facie case. Since the suit property is ancestral therefore if the Defendants dispose of suit property then the Plaintiffs would lose their right and the same would not be compensated in terms of money. Therefore the Plaintiffs have requested to grant the interim injunction as prayed for.

B. On the contrary, the Defendants have argued that the Defendants are the true owners and occupiers of the suit property. The sale-deed produced by the Plaintiffs have no details of the City Survey number or the description of the property. Further, the Plaintiffs have failed to show that the suit property and the property for which the sale-deed dated 07.04.1942 were the same property. Further the names of the Defendants are there on the City Survey records which prima facie shows the sole ownership of the Defendants.

Therefore the Ld. Adv. for the Defendants have submitted that the Plaintiffs have no prima facie case and they also failed to show the ingredients of Order 39 Rule 1,2 in their favour and therefore the present application of the Plaintiffs seeking interim injunction is required to be rejected.

7. Considering the pleadings, documentary evidence and arguments advanced by the Learned Advocates for the parties for deciding this application, following issues i.e. points for the determination of the present application under Order 39 Rule 1 and 2 of the Civil Procedure Code, have been raised:-

- A. Whether the plaintiffs prove that they are having a prima-facie case?
- B. Whether the plaintiffs prove that the balance of convenience is weighing in their favor?
- C. Whether the plaintiffs prove that if injunction as prayed for is not granted then they would suffer an irreparable loss which cannot be compensated in the terms of money?
- D. What order ??

8. My findings regarding the above points/issues are as follows:-

- A. In the Negative.
- B. In the Negative.

- C. In the Negative.
- D. As per final order

REASONS

For issue No. 1,2 and 3:-

9. Since all the issues are inter connected and therefore the same are discussed together in order to avoid repetition. I have gone through the submissions as advanced by the learned advocates appearing for the parties and also gone through the documents as submitted by the parties on record and while considering the settled principle of law at this stage for adjudicating the present case, entire merit is not required to be discussed. The Hon'ble Supreme Court of India in the case of **Dalpat Kumar Versus Prahlad Singh 1991 (0) AIJEL-SC 7212** has observed in Para 5 as under:-

“Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide,

which needs investigation and a decision on merits. Satisfaction that there is a 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 it 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."

10. Therefore, while considering the above ingredients and considering the facts as averred by the Plaintiffs in their plaint as well as in the present application for temporary injunction, it appears that the Plaintiffs have relied upon the sale-deed dated 07.04.1942 and a copy of the same is produced at Mark-3/2. Perusing the sale-deed at Mark-3/2 it appears that the Administrator of Musalman Madresa Panch had executed an unregistered sale-deed in favor of Chamar Nathulal Bin Punja and Chamar Kala-Bhana Bin Mula. The said sale-deed was an unregistered sale-deed and the consideration amount is shown as Rs. 120/-. Therefore the Section 54 of the Transfer of Property Act is required to be seen which is as under:-

Section 54: "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made. Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in

possession of the property. Contract for sale. A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled, between the parties. It does not, of itself, create any interest in or charge on such property.

-Therefore from the aforesaid provision, when a sale transaction is there for a consideration of Rs. 100/- or above then the sale deed is required to be mandatorily registered. Considering the fact that the sale-deed dated 07.04.1942 is unregistered and therefore no valid title was passed in favor of Chamar Nathulal Bin Punja and Chamar Kala-Bhana Bin Mula. Further when the title of the subject property was not passed validly to Chamar Nathulal Bin Punja and Chamar Kala-Bhana Bin Mula then their legal heirs also cannot claim inheritance since their predecessors themselves did not derive title of the suit property. Therefore the Plaintiffs cannot claim title on the basis of inheritance. The second contention of the Plaintiffs is that the Defendants have mutated their name in the absence of the Plaintiffs when the Plaintiffs were not residing at village Alina. This Court agrees with the submission of the Plaintiffs that title of the subject land cannot be derived merely on the basis of revenue entries but at the same time it is also required to be proved by the Plaintiffs that the names of the Defendants were mutated on the sole basis of inheritance and not by their

continuous long possession. However, the deed can be used for collateral purposes, such as proving possession, nature of entry, or long-standing arrangement, but not title. Therefore this question is required to be ascertained after evidence is led by the parties. But at this stage when the Plaintiffs submitted that they were not continuously residing at the village Alina and they have not produced a single documentary proof of their ownership or about their possession, the same cannot be believed at this stage. Therefore Plaintiffs have failed to prove that they have a prima facie case in their favor. Therefore this Court answers Issue No. 1 in **NEGATIVE**.

11. The court while granting the injunction must exercise sound judicial principles and the concept of balance of convenience means that there must be a proper balance between the parties and balance cannot be a one-sided affair. Considering the second aspect, when the Plaintiffs have themselves submitted that when they were not residing at the subject land, the Defendants got their names executed in their favor. Further the Plaintiffs have submitted that the Defendants have put a lock on the subject property. Therefore it is clear that the Plaintiffs are not having possession of the suit property but the Defendants are having possession of the suit property. Further as per the report of court commissioner, the Son of the Defendant No. 1 has been shown to be running an electronics

shop and the Defendant No. 4 is shown to be residing in the house when the lock was opened. Therefore prima facie the Defendants appears to be possession of the subject property and therefore when the Plaintiffs are not residing at the subject property, they have not shown any proof about their possession then the balance of convenience also does not appear to be in favour of Plaintiffs and therefore Issue No. 2 is also answered in **Negative**.

12. The Plaintiffs have averred that if the injunction as prayed for is not granted then they would suffer an irreparable loss which cannot be compensated in the terms of money. Looking at the facts of the present case, it clearly appears that the Plaintiffs cannot derive title by way of inheritance from late Kalidas @ Kalabhai since the sale-deed dated 07.04.1942 was in contravention of Section 54 of the Transfer of Property Act. Further the Plaintiffs have also failed to prima facie show that they are in possession of the subject property. They have also not filed any documentary evidence that they borne the construction cost of the subject property. Therefore in absence of any proof of title/ownership or possession, the Plaintiffs are unable to show that if the injunction is not granted then they would suffer an irreparable loss. Therefore this Court does not deem fit to exercise the discretion in favor of the Plaintiffs herein. Therefore this Court answers Issue no. 3 in **NEGATIVE**.

13. Hence, in the view of all the above circumstances and satisfaction of all the three ingredients, for the issue no. 4, the following order has been passed:-

ORDER

1. The application filed by the Plaintiff vide Exh. 5 under Order 39 Rule 1, 2 R/W Section 151 of the Code of Civil Procedure, 1908 is hereby rejected.

2. No order as to cost.

Signed and pronounced in open court today on this 17th
day of November, 2025

Place: Mahudha
Date: 17.11.2025

Kishankumar R. Maurya
Principal Civil Judge,
Mahudha, Dist: Kheda.
Code: GJ01723.