

ORDER BELOW EXHIBIT-5 AND 22

1. The plaintiff has filed this present suit for declaration, permanent injunction, and partition. The plaintiff has also filed temporary injunction application vide Exhibit-5 for restraining defendant no. 1 to 3 from causing any kind of obstruction in using the property or performing any kind of agricultural activities over the property having *Khata no.* 19 Revenue survey no. 153 ad-measuring 2-07-40; *Khata no.* 17 Revenue survey no. 118/4 ad-measuring 0-06-07 and *Khata no.* 17 Revenue survey no. 367 ad-measuring 1-69-96 situated at Mota Khanpur, Ta. Khanpur [hereinafter ‘Suit Property’] until the final disposal of the suit.
2. The brief facts of the case are, that plaintiffs are the legal heirs of Nanabhai @ Nathabhai Koyabhai Chamar. Plaintiffs great grandfather had five sons out of which apart from our grandfather Koya Kodar others died without giving birth to any child. Thus, this suit property is the ancestral property of both the parties to the suit. Defendant no. 1 is the uncle of plaintiffs. Furthermore, it is stated that the grandfather Koyabhai Kodarbhai of the plaintiff died in the year 1977 and the names of plaintiff’s father and defendant no. 1 was added through succession vide mutation entry no. 445 on 14/04/1978. Further, the suit property has been divided between the parties orally and through boundaries, but in the revenue records of the suit property, it is jointly running in the name of both the parties. Thus,

agricultural activities over ½ of the suit property is performed by the plaintiffs and defendant no. 1.

3. Furthermore, it is stated by the plaintiffs that, since the suit property was given to plaintiff's father and defendant no. 1 through succession, the plaintiffs have ½ share in the suit property. Further, the defendants do not allow the plaintiffs to enter in the suit property and perform the agricultural activities. Furthermore, no partition has taken place of the suit property and the same should be distributed in light of provisions of Hindu Succession Act. Thus, plaintiff has a prima facie case and balance of convenience is in the favour of plaintiff. further, if temporary injunction application is rejected then irreparable loss will be caused to the plaintiff which cannot be compensated in money. Therefore, present temporary injunction application should be allowed in favour of the plaintiff.
4. Furthermore, defendants have been duly served with the notice. Defendant no. 4 and 5 are proforma defendants. Defendant no. 1 to 3 have appeared through Ld. Advocate Shri K. S. Maliwad and filed their reply vide Exhibit-18. The defendants have denied the contentions of the application of the plaintiffs and have stated that, defendant no. 1 is the adopted son of Late. Ganeshbhai Kodarbhai Chamar. Furthermore, as per the *hakpatrak* no. 6, entry no. 9 dated 20-06-1953, the suit property belonged to both Late. Kohyabhai Kodarbhai and Late. Ganeshbhai Kodarbhai. Thus, plaintiff has not displayed true facts in front of the court. furthermore, from

last 60 years the defendant no. 1 is having the possession of the suit property. Thus, plaintiffs have filed this suit to illegally possess the suit property as the names of both parties is running in the revenue record of the suit property. Thus, the suit filed and the injunction application made by the plaintiff is false and frivolous. Thus, plaintiff do not have any right to file this application and irreparable loss will be caused to the defendant no. 1 to 3 if the application of the plaintiff vide Exhibit-5 is allowed. Therefore, the application of the plaintiff should be rejected with cost.

5. Thereafter, the defendant no. 1 to 3 have filed a counter temporary injunction application vide Exhibit-22 against the plaintiffs. The averments made in the counter injunction application are in line with the averments of the written reply of the defendants vide Exhibit-18. Further it has been stated by the defendants that, the plaintiffs have filed a false suit and application just because their name is running in the revenue records of the suit property. The suit property is possessed by the defendant no. 1 from last 60 years and plaintiff have no right over the same. Thus, the plaintiffs or their agents should be restrained causing any kind of obstruction to the defendants over the suit property and from transferring the property by any means to anyone until the disposal of this case. Thus, defendants have a prima facie case and balance of convenience is in the favour of defendants. Further, if temporary injunction application is rejected then irreparable loss will be caused to the defendants which cannot be compensated in money.

Therefore, present counter temporary injunction application should be allowed in favour of the defendant no. 1 to 3.

6. Per Contra, the plaintiffs have filed their reply to the counter temporary injunction application vide Exhibit-30. They have denied the contention of the defendants application. furthermore, it is stated by the defendant no. 1 that, he is the adopted son of Late Ganesh Kodarbhai, but whether the adoption was as per the provisions pf hindu law, that is nowhere stated by the defendant no. 1. the averments made in their reply are in line with their averments in the plaint. Thus, it is stated by the plaintiffs that the counter claim and the counter injunction application is false and plaintiffs have equal right over the suit property as per the provisions of the Hindu Succession Act. Therefore, the counter injunction application of the defendants be rejected with cost.

7. The plaintiff has submitted following list of documents with his plaint: -

Sr. no.	Mark no.	Document
1.	3/1	Copy of the village sample no. 7/12 of the suit property revenue survey no. 153.
2.	3/2	Copy of the village sample no. 8-A of the suit property revenue survey no. 153.
3.	3/3	Copy of the village sample no. 7/12 of the suit property revenue survey no. 367.

4.	3/4	Copy of the village sample no. 7/12 of the suit property revenue survey no. 118/4.
5.	3/5	Copy of the village sample no. 8-A of the suit property revenue survey no. 367 amd 118/4.
6.	3/6	Succession entry through mutation entry no. 445 dated 14/04/1978.
7.	3/7	Succession entry through mutation entry no. 515 dated 16/04/1982.
8.	3/8	Succession entry through mutation entry no. 516 dated 16/04/1982.

8. The defendant no. 1 to 3 have submitted following documents with their written reply and counter claim: -

Sr. no.	Mark no.	Document
1.	20/1	Gram Panchayat receipt of house no. 737.
2.	20/2	Xerox Copy of electricity bill.
3.	20/3-20/4	Receipt of Sikshan Upkar.
4.	20/5-20-12	સરકારને ચુકવણી કર્યા અંગેની પહોંચો ની નકલ.

9. Heard the Ld. Advocate Shri R.R. Suthar for plaintiffs on injunction application and counter injunction application. he has also submitted a pedhinama to make the facts of his case clearer. Rest of the arguments are

in line with averments of his injunction application and reply to counter injunction application.

Per contra, the Ld. Advocate Shri K.S. Malivad has given oral arguments which were in line with the averments of written reply to the injunction application and his counter injunction application.

10. In the interest of justice following issues are framed: -

- i. Whether plaintiff has a prima facie case?
- ii. Whether plaintiff will suffer irreparable loss which cannot be compensated in money if injunction order is not granted in his favour?
- iii. Whether the balance of convenience is in favour of plaintiff?
- iv. Whether defendants have a prima facie case?
- v. Whether defendants will suffer irreparable loss which cannot be compensated in money if injunction order is not granted in his favour?
- vi. Whether the balance of convenience is in favour of the defendants?
- vii. What order?

11. Answers of the aforesaid issues are mentioned herewith: -

- I. In the affirmative.
- II. In the affirmative.
- III. In the affirmative.
- IV. In negative.
- V. In negative.

VI. In negative.

VII. As per final order.

REASONS.

12. At the outset, it may be mentioned that for the sake of convenience, all the above issues have been discussed together. The issuance of injunction is governed by Order 39 Rule 1 & 2. The grant of injunction is a very serious matter and Court should always take good care to grant an injunction in cases only where such an injunction is essential. It being equitable relief, it would be refused to the person who himself has failed to do equity. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of temporary injunction.
13. Now, looking at the averments of the temporary injunction application; counter temporary injunction application; reply of both the parties and documents submitted, it is clear that at present in the revenue records of the suit property the names of both plaintiffs and defendant no. 1 is there. Furthermore, above mentioned fact is supported by documents submitted by the plaintiff vide Mark no. 3/1 to 3/5. Thereafter, it can be inferred from document vide Mark no. 3/6 that names of plaintiff's father and defendant no. 1 was added through succession vide mutation entry no. 445 on

14/04/1978. Furthermore, it is admitted by the plaintiffs that they have no objection regarding the fact that the defendant no. 1 has his house over the suit property from last 60 years, but apart from that the area of the suit property belongs to both plaintiffs and defendant no. 1, which is clear from the documents submitted by the plaintiffs.

14. In the case **Martin Burn Ltd. V. R.N. Banerjee [AIR 1958 SC 79]** the apex court has clearly stated that, *“a prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.”* It is no part of the courts function at this stage to try to resolve a conflict of evidence nor to decide complicated questions of fact and of law which call for detailed arguments and mature considerations. These are matters to be dealt with at the trial. In other words, court should not examine the merits of the case closely at this stage because it is not expected to decide the suit finally. Thus, whether the defendant no. 1 have gone through legal adoption process as per hindu law or not? Whether the plaintiffs actually have ½ share in the suit property as per Hindu Succession Act or not? should be decided on merits.

15. Furthermore, in the case **Kashi Nath Samsthan V. Shrimad Sudhindra Thirtha Swamy [(2010) 1 SCC 689]** the apex court held that, “*prima facie case must precede an order of injunction. Only when prima facie case is established then only the court will consider other factors. If the applicant fails to prove prima facie case, he is not entitled to temporary injunction.*”

Thus, looking at the documents on record, it at this juncture it can be said that the revenue records of the suit property consist name of both plaintiffs and defendant no. 1. Furthermore, looking at the mutation entry no. 445 vide document mark no. 3/6 it can be inferred that the suit property was given to both plaintiff's father and the defendant no. 1 through succession. Thus, at this juncture it can be said that the plaintiffs have a prima facie case and defendant no. 1 to 3 have no prima facie case. Thus, in this case the defendants is not able to prove that they have a prima facie case. Therefore, there is no need to prove other factors i.e. irreparable loss and balance of convenience in case of counter injunction application by the defendants. Thus issue no. 1 is decided in affirmative and issue no. 4 is decided in negative.

16. Now, the existence of the prima facie case alone does not entitle the applicant for temporary injunction. The plaintiffs have to further satisfy the Court about the second condition by showing that they will suffer

irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect themselves from the consequences of apprehended injury. In other words, the court must be satisfied that refusal to grant injunction would result in “irreparable injury” to the party seeking relief and he needs to be protected from the consequences of apprehended injury. Furthermore, granting of injunction is an equitable relief and such a power can be exercised when judicial intervention is necessary to protect rights and interests of the applicant. In the case **Manohar Lal Chopra v. Seth Hiralal [AIR 1962 SC 527]** it was observed by the Apex Court that, “*the expression irreparable injury, however, does not mean that there should be no possibility of repairing the injury. It only means that the injury must be a material one, i.e. which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exist no specific or fixed pecuniary standards for measuring damages.*”

Now, in this present case looking at the documents on record it can be perused that, if defendants or their agents transfer the suit property by any means to anyone and later on it is proved that the plaintiffs are having equal share in the suit property then they will suffer irreparable injury which cannot be compensated by monetary relief. Therefore, at this juncture it can be said that plaintiffs can suffer irreparable injury which

cannot be compensated by monetary relief. Thus, issue no. 2 is decided in affirmative and issue no. 5 is decided in negative.

17. The third condition for granting interim injunction is that the balance of convenience must be in the favour of applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it. It is by considering the comparative inconvenience that the court will exercise the discretion. But this condition will be taken into consideration only when the previous two conditions of prima facie case and irreparable injury is proved. Hence, in this case the prior two conditions are in favour of plaintiffs and now it is the duty of the court to consider inconvenience of the plaintiffs as against the inconvenience of the defendants. The court must weigh one need against another and determine where the balance of convenience lies. In this case, taking into account the facts and circumstances of the case and applying precedents to the case it can be said that balance of convenience is in favour of the plaintiffs. Hence, issue no. 3 is decided in affirmative and issue no. 6 is decided in negative and for issue no. 7 following final order is passed in interest of justice.

--FINAL ORDER--

1. Present temporary injunction application vide Exhibit-5 by the plaintiffs is hereby **allowed**, restraining defendant no. 1 to 3 from causing any kind of obstruction to the plaintiffs in using the suit property or performing any kind of agricultural activities over the suit property
2. Present Counter temporary injunction application vide Exhibit-22 by the defendants is hereby **rejected**.
3. No order as to cost.

The order was pronounced and signed in the open court today.

Date : 10-01-2024

Place : Khanpur @ Bakor

(Ravish Anil Nagpal)

Principal Civil Judge and
J.M.F.C, Khanpur@Bakor
[Judge Code No. GJ01553]

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