

ORDER BELOW EXHIBIT - 5 IN R.C.S NO.33/2019

1. The plaintiff has filed the injunction application at Exh.5 and sought injunction order against the defendants that neither defendants nor their person/s, servants or agents through banakhat, agreement or contract deed, or deed of gift or through power of attorney sale, transfer or cause damage to the suit property directly or indirectly (hereinafter referred to as 'suit land' or 'suit property') as such injunction order may be passed against defendants till the final disposal of the suit.

2. Brief facts of the present application Exh.5 of the plaintiff is that, defendants who happened son of uncles and daughters who had out of knowledge illegally bring their names on record.
 - 2.1 Further, it is averred that land bearing revenue block/survey No.115 whose old survey No.10/A area Hector-ARE-Sq.mt, Aakar/Value at the rate of Rs.3004ps and land bearing revenue/survey No.121 whose old bearing survey No.10/B it's area Hector-ARE-Sq. mt.0-16-44, Aakar/Value at Rs.1-53ps and it's revenue Block/Survey No.103 and it's old survey No.23/A, area Hector-ARE-Sq.mt 1-05-11, Aakar/Value at Rs.6-18ps. And revenue bearing

block/survey No.142 and it's old bearing survey No.23/B area Hector-ARE-Sq. Mt. 0-03-74, Aakar/Value at the rate of 0-69ps. agriculture land having old condition situated moje Dudhai, in the sim of Taluka Kadi which are of ancestral joint properties of plaintiffs and defendants whose actual possession and occupation is with plaintiffs and defendants. Said property(herein after referred to as "suit land" or "suit property") continued on the name of defendants on the revenue record.

2.2 Further, it is averred that suit land was continued on the name of ancestral of plaintiff and defendants named Goga Dosu and Nani Kalu Goga as administrator through the right of Tenancy for which entry at village form No.6 (right of record) entered vide entry No.162.

2.3 Further, it is averred that after the death of uncle Kalubhai who is administrator of the property of the family and name of widow Nani Kalu Goga entered on record as simple tenant on the record of survey NO.10/A & 10/B for which entry vide No.162 made at the village form No.6(right of record) and same is certified and then after name of widow Nani Kalu was deleted for which entry in respect of deletion made at village form No.6 (right of record) vide entry No.196 and same has been certified.

2.4 Thenafter name of Sipai Jahangirbhai Kalubhai was entered as simple tenant on the

record of the suit land, thus Jahangirbhai Kalubhai who is the straight lineage of Nani Kalu Goga and entered in the revenue record for which entry at village form NO.6 (right of record entered vide No.309 and 617 and same has been certified. Thenafter fully paid the amount of sale consideration of the suit property name of heir of Kalubhai i.e. Jahangirbhai was entered as owner and occupier of the land for which entry made at village form No.6 (right of record) vide entry No.698 and 699 and same have been certified.

2.5 Further, it is averred that after the death of other co-sharer Gogabhai his legal heirs such as Gogu Dosu named Jivanbhai Gogbhai and his heirs such as Alubhai Jivanbhai and Kalubhai Jivanbhai and plaintiffs and defendants became the owners and occupier of the suit lands and in the previous time heirs of family administrator and uncle of Kalu Goga's heirs named Nani Kalu Goga and Jahangirbhai have been continued and after their death of heirship entry was made. Plaintiffs occupied and possessed their actual part in the joint lands.

2.6 Further, it is averred that partition of suit land among the ancestors of plaintiff or defendants and then after between plaintiffs and defendants have never been made and heirs of ancestor of plaintiff named Jivanbhai

Gogabhai i.e. plaintiffs $\frac{1}{2}$ part as co-owners, co-occupiers and possessed the suit land as per the provision of Muslim Succession Act.

Cause of injunction application :

As per pedigree, plaintiffs have ownership, occupiers and possessed the undivided part of the suit land was and is continued with the plaintiffs as per provision of Muslim Succession Act. Later, plaintiffs have asked to divide their part to defendants, but defendants one or other reason delayed it and not given satisfactory reply, but name of defendants continued on the record on the basis of heirship, but name of defendants continued on the revenue record through the right of heirship and with a malign intention on the D-jura capacity, defendants are trying to transfer or assign the suit property to other third party. Further, defendants gave threat to plaintiff to sale the suit property to other third party.

2.7 Further, it is averred that plaintiffs have prima facie case, balance of convenience is in favour of plaintiffs and if injunction order may not be granted in favour of plaintiffs then irreparable loss caused to plaintiffs and huge loss may be caused in respect of right, interest and entitlement over the suit property may be caused harmful which cannot be compensated in terms of money. Further, it is

averred that suit proceeding may take long time, during the time it is required to pass temporary injunction order against the defendants, hence present suit as well as injunction application are filed.

3. In support of the claim, plaintiff has filed documents vide mark 3/1 to 3/9.
4. This court has issued the notice to the defendants. Defendants appeared through their Advocate and filed written statement to the suit as well as injunction application vide Exh.13. In their written statement, it is contended that contents of suit as well as injunction application are not true and denied in *toto*. Further, it is contended that contents of para-1 to 3 are not true. Further, it is contended that contents of para-4 in respect of administrator of the family property plaintiffs uncle Kalubhai Gogabhai and after his death which is not true because grand father of defendants named Kalubhai Gogabhai nor ancestor of plaintiffs was being as administrator because as plaintiff shown name of Jivanbhai Gogabhai and Kalubhai Gogabhai in the pedigree, in which Jivanbhai Gogabhai came as elder brother and Kalubhai who was appeared as younger brother for which evidence is led in the matter. Further, it is contended that contents of para-5 of the suit as well as

injunction application are not true and as per say of plaintiffs that land have not been occupation and possession with the Gogu Dosu. Plaintiffs are trying to show them as heirs and both the lineage are straight and lands which independently belongs to ancestor of defendants named Jahangirbhai Kalubhai as on right of tenancy and held him as legal owner and occupier by the Krushi Panch to which plaintiffs have stated false fact in the suit and injunction application. Further, it is contended that contents of para-6 of the suit as well injunction application are not true and plaintiffs have no right, part, interest, share or entitlement over the suit land, hence there is no question of partition/distribution of the land. Further, it is contended that contents of para-7 shown cause is not true. But fact is that plaintiffs have no right, title, interest or share over the suit land and said suit land have not devolved to plaintiffs thorough their right of heirship. But the fact is that lands which independently belongs to ancestor of defendants named Jahangirbhai Kalubhai as on right of tenancy and held him as legal owner and occupier by the Krushi Panch and till the day continued. It is urged that plaintiff has no prima facie case, balance of convenience is not in favour of the plaintiff, so considering the reply, suit as well as injunction

application of the plaintiff be dismissed with cost. In support of their claim, defendants have produced documents vide mark 14/1 to mark 14/10.

5. I have heard the arguments of of both the learned Advocates of the respective parties at length.
6. For deciding this application, following issues arises for my determination:

ISSUES

1. Whether the plaintiff has a prima facie case in his favour?
 2. Whether the plaintiffs convenience is in favour of the plaintiff?
 3. Whether an irreparable injury will be caused to the plaintiff if temporary injunction is not granted?
 4. What order?
7. My findings to the above points are as under:
- (1) Issue No.1 : In the Negative.
 - (2) Issue No.2 : In the Negative.
 - (3) Issue No.3 : In the Negative.
 - (4) Issue No.4 : As per final order.

Reasons

8. As all the three issues are inter-connected with each other and in order to avoid repetition of the facts, all the three issues are dealt and discussed together, Here in this suit the plaintiff has filed this suit for Establishment of Rights and partition in which the prayer which are made by him is already discussed in para no. 2 thus not repeated again but the main issue which agitated by the plaintiff that the suit properties are their ancestral properties and they are having the right over the suit properties and to show their right they have produce the documents vide Mark3/1 to 3/9 but in the documents in none of the documents it's seems that they are having prima facie case in favours of them as per pleading of them they stated that the suit properties are ancestral properties and being a big brother in family the name of predecessor of defendant was entered in record of right but they are also having the right over the properties and for same they have presented the pedigree vide Mark 3/6 by perusing the pedigree it's seems that the plaintiff and defendant are having same branch of family tree and plaintiff are successor of Jivanbhai while the defendant are successor of Kalubhai and being the successor of late Sipai Goga Dosbhai the Name of Nani Kalu Goga was entered in the record of right and which entry is made by

mistaken but the name of Kalu Goga and Jivangoga is required to be entered being a straight line successor of Goga Dosa but the administration of the suit properties was done by Kalu Goga thus his name was entered and after that the Tennacy Case was proceed in which the name of Nani Kalu was entered being a spinster of Kalu Goga and after that the Name of Jahangir Kalu was entered as a Tenant and for which plaintiff rely on the document vide Mark 3/9 the contention of the plaintiffs is that he was not a sole tenant and this suit properties was joint properties and his name was entered as family tenant being a elder brother of the family. But the defendant has oppose this all plea of plaintiff and they have stated that whatever contention is made by the plaintiff is totally mislead the court because the issue which are already settled by the Mamlatdar and ALT (Krushi Panch) plaintiff wants to agitate those issue again in this court which is barred by the provision of Gujarat Tenancy and Agricultural Lands Act,1948 thus the plea of the plaintiff can not be entertained at all, to fortify their contention they have relied upon the document vide Mark 14/1 to 14/11 and Mark 291 to Mark 294.While perusing these documents it's seems that the suit properties was devolved in the name of Jahangir Kalu which is manifest by perusing the documents vide mark 14/6 to 14/10 in which nowhere it is found that

the suit properties is having joint tenancy also the Civil Court not having the right to decide this issue only ALT having the right to declare that whether the tenant is a sole tenant or family tenant and this issue was already decide by the authority thus this court not having right to decide this issue because there is a bar of jurisdiction as per Section 85 of Gujarat Tenancy and Agricultural Lands Act,1948 so we are not much discussing about this issue. With that this suit is filed by the plaintiff for partition and claim the share against the defendant which as per the say of plaintiff are co-sharers but as per the settled principles of law in the case of **Sant Ram Nagina Ram V/s. Daya Ram Nagina Ram, AIR 1961 Pb. 528** Hon'ble P&H High Court laid down that injunction can not be granted against the co-owner or co-sharers thus also looking to facts and prayer of the case the injunction can not be granted thus plaintiff's fails to show prima facie case in favours of them looking to the facts of this case thus plaintiff has fails to show his prima facie case in his favour. Further, as the if the suit property will alienate by the defendant, then the suit of the plaintiff will became a purpose less, but as per above discussion plaitiff having no prima facie case in his favour which shows that balance of convenience is also not in favour of the plaintiff. Further,

the plaintiff is seeking relief of interim injunction. For that purpose, it is also necessary that the relief which is claimed through interim injunction must be such which cannot be compensated in money whereas in the present suit, the main relief of the plaintiff is to get share in suit property And for the establishment of their right but as already stated above that plaintiff fails to establish their prima facie case in their favour thus the irreparable loss is also not seen that will occurred to the plaintiff, therefore, all the essential ingredients of order 39 are not satisfied. Hence, the interim injunction cannot be granted. Hence, in the interest of justice, this court passes the following order:

:: ORDER ::

1. The plaintiff seeking for temporary injunction application vide Exh. 5 is hereby rejected.
2. The cost of this application is decided as per the final order of this suit.

Signed and pronounced in the open court on 21st day of December 2022 at Kadi.

Place: Kadi.

Date: 21-12-2022. **(RajvratCharan B. Gadhvi)**

2nd Additional Senior Civil Judge,
Kadi, Dist. Mahesana
[Code No.-GJ01067]