



ORDER BELOW EXHIBIT - 5
IN REGULAR CIVIL SUIT No.13 of 2023

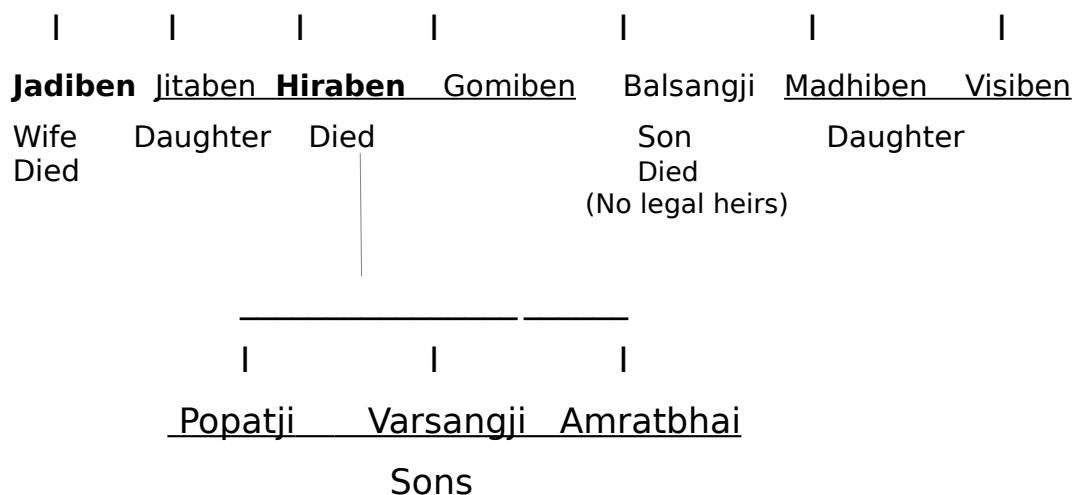
1. The plaintiffs have instituted the suit for declaration and permanent injunction against the defendants and it will take time to reach at the finality of the suit and thus, the plaintiffs have preferred present application - Exh.5 under order XXXIX, Rule-1 & 2 and under Sec.151 of C.P.C, 1908 for temporary injunction order against defendants.

1.1 Brief facts of the plaintiff's suit as well application below Exh.5 are that, the plaintiffs and defendants are holding joint ownership and possession over the below mentioned properties (**herein after referred to as the suit properties/land**) :-

New R.S. No.	Old R.S. No.	Measure of Land (Hec.Are.Sq.Mtrs.)	Value
433	790	2-67-61	6.45
438	791	0-99-28	4.97
439	792	1-96-35	9.90
447	827	1-36-52	2.54
448	828	0-58-12	1.93
Total		—————▶	7-57-88
			25.79

➤ That, the agricultural lands were on the joint name of father of plaintiff and defendants -1) Thakor Hajurji Sonaji, 2) Thakor Amraji Sonaji, 3) Thakor Maganji Sonaji whereby plaintiffs' father - Amraji Sonaji and Thakor Harjurji Sonaji

and Thakor Maganji Sonaji were died and entry of the same has been registered in Hak Patrak on 01.06.1994 being entry No.4289, whereby names of legal heirs of Hajurji Sonaji and Thakor Maganji Sonaji were mutated in the revenue record but after death of plaintiffs' father Amraji Sonaji, the defendants have illegally not entered the names of the plaintiffs in the revenue record by producing false pedigree. Further, it is averred by the plaintiffs that they are legal heir and owner of the suit property but as they are illiterate ladies and residing at their matrimonial resident, the defendants have not entered their names as legal heirs in entry No.4289. The plaintiffs have produced pedigree of deceased **Amraji Sonaji Mohanji Thakor** who died on 15.05.1978 as under



- 1.2 The plaintiffs have submitted that, they have never waived their rights over the suit property or any distribution has not been carried out in the suit property. Further, it is submitted by the plaintiffs that, their deceased brother Thakor Balsangji Amraji had filed application bearing RTS No.89/2018 before the Prant officer, kadi against the Heir ship entry No.4289 which was rejected. Subsequently,

conciliation had been carried out between them and the defendants have assured the plaintiffs to enter names of the plaintiffs in the revenue record of the suit property but the defendants have tried to sell the suit property on the basis of false heirship. Under such circumstances, to protect their rights, plaintiffs are constrained to file the suit as well as injunction application and in the injunction application-Exh.5, they have requested that defendants or their servant, agents be restrained to sell, transfer, gift or mortgage the suit property to any one and also sought other relief as deems fit and proper.

2. Though duly served with the Notice and providing sufficient opportunities, the defendants have neither appeared before the court nor filed any reply and consequently, the plaintiffs have filed an application vide Exh.06 to close the right of the defendants to file their reply and accordingly, order has been passed below Exh.6 as on 25.07.2023 whereby close the right of the defendants to file their reply.
3. In support of the application, plaintiff has produced documentary evidence vide Mark 3/1 to 3/9.
4. Heard the Ld. Advocate for the plaintiffs and perused the material produced on record.
5. For deciding this application, following issues arises for my determination:

~:: **ISSUES** ::~

1. Whether the plaintiffs have prima facie

case in their favour?

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

- :: REASONS ::-

7. Issues NO.1 to 4 :

All these issues are inter-connected with each other and in order to avoid repetition of the facts, all these issues are dealt and discussed together.

Here in suit the main controversy is arise between the plaintiff and defendants as per averments of plaintiff's that the joint ownership and possession over the suit properties and they are having joint ownership over the suit properties they averred that Amraji Sonaji and Thakor Harjurji Sonaji and Thakor Maganji Sonaji were died and entry of the same has been registered in Hak Patrak on 01.06.1994 being entry No.4289, whereby names of legal heirs of Hajurji Sonaji and Thakor Maganji Sonaji were mutated in the revenue record but after death of plaintiffs' father Amraji

Sonaji, the defendants have illegally not entered the names of the plaintiffs in the revenue record by producing false pedigree. Further, it is averred by the plaintiffs that they are legal heir and owner of the suit property but as they are illiterate ladies and residing at their matrimonial resident, the defendants have not entered their names as legal heirs in entry No.4289. they have never waived their rights over the suit property or any distribution has not been carried out in the suit property. Further, it is submitted by the plaintiffs that, their deceased brother Thakor Balsangji Amraji had filed application bearing RTS No.89/2018 before the Prant officer, kadi against the Heir ship entry No.4289 which was rejected. Subsequently, conciliation had been carried out between them and the defendants have assured the plaintiffs to enter names of the plaintiffs in the revenue record of the suit property but the defendants have tried to sell the suit property on the basis of false heirship. Here in the suit the defendants are not remains present thus their right of filing the reply is closed though the controversy is arise regarding the joint ownership, false revenue entry and not carried out of any partition but at this stage without inviting the trial these issue can not be determined on the basis of verbal pleadings and revenue record also no such revenue entry is also produce from the plaintiffs side regarding the joint ownership and possession over the suit properties thus at this stage the veracity of revenue record and disputed entries are also not

tested and all these are a question of evidence and question of fact but looking the pleadings and averments plaintiffs fails to show their prima facie case. Now to make more clear on this issue if we see the settled legal position that whether the injunction can be granted against the co-owner or not than

In the case of **Watson & Co. V/s. Ram Chand Dutt, ILR 18 Cal. 10(1890)**. The privy Council laid down the following rules"-

- a) that the Court should be cautious of interference with the rights of co-sharers;
- b) that the circumstances of this country and its law were to be considered;
- c) that where a co-sharer is in actual occupation of land not actually used by another cultivating in a proper course of cultivation, and that sharer resists a co-sharer, not in denial of title, but with a view to self-protection there should be no decree for joint procession or injunction, but damages only should be given.

Also 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 the following propositions after considering the various authorities and principles:-

- (1) A co-owner has an interest in the whole property and also in every parcel of it.
- (2) The possession of the joint property by one

co-owner is, in the eye of law, possession of all even if all, but one, are actually out of possessions.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive, but also hostile to the knowledge of the other, as when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar right of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.

(8) The remedy of a co-owner not in possession or not in possession of a share of the joint property, is by way of a suit for partition or for actual possession, but not for ejection. Same is the case where a co-owner sets up an exclusive title in himself.

- (9) Where a portion of the joint property is by common consent of the co-owners, reserved for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be rejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered injunction can not be granted against the co-owner or co-sharers

Now if connote the facts of this with above ratio decidendi than 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. Further, as the if the suit property will alienate by the defendants, then the suit of the plaintiffs will became a purpose less, but as per above discussion plaintiffs having no prima facie case in their favour which shows that balance of convenience is also not in favour of the plaintiffs. Further, the plaintiffs are 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 plaintiffs are to declare their joint ownership and possession over the suit properties and false entry vide no.4289 was made in suit properties and their ancestor having joint ownership and right and being a straight line successor of him they became owner and possessor of the suit properties and defendants wants to grab their rights 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 plaintiffs, and the genuineness of mutation and plaintiffs joint ownership and possession rights are not decided at this stage without adducing the evidence and that is a question of trial which is determine at the stage of trial with that whether the defendants having rights over the suit properties or whether partitioned were carried out or not can not be determine at this stage and that all are question of evidence and question of trial therefore, all the essential ingredients of order 39 are not satisfied. Hence, the interim injunction cannot be granted and answers for issues No.1 to 3 are in negative and for issue No.4, I pass 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 10th day of September, 2024 at Kadi.

Place: Kadi.

Date: 10-09-2024.

(Rajvratcharan B. Gadhvi)
2nd Addl. Senior Civil Judge,
Kadi, Dist. Mahesana
[Code No.-GJ01067]