

**ORDER BELOW EXHIBIT - 5**

1. Read the application and heard the Id. Advocate for the plaintiff. Also, heard the Id. Advocates for the defendants No.1 to 6.
2. The plaintiff have filed present suit for declaration and cancellation of sale deed to the extent of share of the plaintiff and to get temporary injunction in respect of old tenure agriculture lands situated at moje Medha, Taluka Kadi, bearing block/survey No.21 (new survey No.15), block/survey No.454/A (new survey No.667), block/survey No.455 (new survey No.666), block/survey No.7 (new survey No.5), block/survey No.66 paiki 1 (new survey No.54), block/survey No.66 paiki 2 (new survey No.55), block/survey No.65 (new survey No.53), survey No.445/B (new survey No.642) which were in possession and were originally continued in the name of his deceased her father Prahladbhai Haribhai in the Government revenue record and after his death of father on 26/6/1998, on the basis of application of legal heirs and pedigree, names of his legal heirs were mutated (heirs is described in para-3 of the suit) vide mutation entry No.1502 and same was certified on 12/11/1998. As per pleading, plaintiff has right over 1/6th share over the suit properties. Further, it is averred that out of total survey number of lands, land of survey

No.65 and 66 (new numbers 53, 54 and 55) she has dispute (**herein after referred to as 'suit properties'**).

2.1 Further, it is averred that defendant No.1 who is the widow of brother of plaintiff named Vadilal Prahladbhai and defendants No.2 & 3 who are the sons of defendant No.1, whereas defendant No.4, who is the brother of plaintiff and defendants No.5 & 6 who are the purchasers of the suit properties. Further, it is averred that without her knowledge and consent, defendants No.1 to 4 had made partition of the suit properties including her share, which was mutated in the village form No.6 on 13/3/2000 and same was certified vide entry No.1598, dated 20/4/2000. Further, it is averred that defendants No.1 to 3 made partition including her share over the suit property and extincted her right over the suit properties. Further, it is averred that defendants No.1 to 3 had sold the suit properties to defendant No.5 through registered sale deed No.616, on 22/5/2002. Moreover, defendant No.4 had sold the land area Acre-Guntha 2-16 ad measuring Hector-ARE-Sq.mt. 0-97-12 of the suit properties to defendant No.6 through registered sale deed NO.1275, dated 22/4/2009 and handed over the possession to him for which mutated registered sale entry in the revenue record and same were certified vide

entries No.1719 and 2172 respectively, for which plaintiff has filed the present suit for cancellation of the registered sale deeds upto the extent of her share as prayed for and to get temporary injunction against the defendants No. 5 & 6 in respect of the suit properties. The plaintiff has preferred an application vide Exh.5 to get temporary injunction. To avoid repetition, facts are not repeated again. The plaintiff has produced documents vide D/List Exh.3.

3. Upon receiving summons/notices, defendants remained present through their Ld. Advocates. Defendants No.1 to 4 has filed their written statement vide Exh.14. In their written statement, they have denied the facts and averments of the suit as well as injunction application in toto. Defendants have stated the true facts that, lands situated in the sim of moje Medha, Taluka Kadi, bearing survey No.21 (new survey No.15), old survey No.454/A (new survey No.667), old survey No.455 (new survey No.666), old survey No.7 (new survey No.5), old survey No.66 paiki 1 (new survey No.54), old survey No.66 paiki 2 (new survey No.55), old survey No.65 (new survey No.53), old survey No.445/B (new survey No.642) out of total suit properties, partition took place among the brothers in respect of survey Nos.65 and 66, in

which Patel Prahladbhai Haribhai, who is the ancestor of plaintiff and defendants No.1 to 4, share devolved to him area Acre-Gundha 0-28 of survey No.65 and area Acre-Guntha 4-05 of survey No.66 and thereafter the death of Patel Prahladbhai Haribhai and his son Patel Vadilal Prahladbhai, names of plaintiff and defendants No.1, 2 3 & 4 were mutated through the heirship entry NO.1502 and thereafter partition of the suit properties took place and area of land Acre-Guntha 2-16 of survey No.66 devolved to Patel Rajnikant Prahladbhai and land of area Acre-Guntha 1-29 of survey No.66 paiki and land of area Acre-Guntha 0-28 of survey No.65 devolved to Patel Savitaben Vadilal, Patel Hiteshkumar Vadilal and Patel Dileshkumar Vadilal for which mutated entry No.1598, dated 13/03/2020 in the revenue record and before certified of the said entry, notice under Sec.135D issued to all the legal heirs on which they had made their signatures as well as they have gave their consent reply before the Talati-cum-Mantri. As such, partition entry No.1598 was legally certified and thereby lands devolved to defendant No.4 Patel Rajnikant Prahladbhai and defendants No.1 to 3 Patel Savitaben Vadilal, Patel Hiteshkumar Vadilal and Patel Dileskumar Vadilal and at the relevant time entries in respect of their names

as owners and occupiers were mutated in the revenue record. Further, it is submitted that the land of area 0-97-12 of survey No.66 paiki was running in the name of defendant No.4 as owner and occupier of the property and defendant No.4 had received the sale consideration amount from defendant No.6 and sold the suit property by defendant No.4 to defendant No.6 through legal registered sale deed, for which mutated sale entry No.2172 and thereby defendant No.6 became the owner and occupier of the said property, as such defendant No.6 became the legal bona fide purchaser of the suit property and he has legal ownership and occupation over the suit property. Further, it is submitted that after due verification the revenue record of the land, defendant No.5 had purchased the land from defendants No.1 to 3 and defendants No.1 to 3 had received the sale consideration amount from defendant NO.5 for their owned and occupied land and sold to defendant No.5 through the registered sale deed and entry No.2140 of ownership in the name of defendant No.5 has been mutated. As such, defendant No.5 became the bona fide purchaser of the suit property and at present he has legal right and title as owner and occupier over the suit property. Further, it is contended that

plaintiff has no prima facie case, balance of convenience is not in favour of the plaintiff and if injunction order be passed in favour of plaintiff then he would be suffered huge loss, which cannot be compensated in terms of money. Hence, suit as well as injunction application of the plaintiff be dismissed with cost.

In support of the defence, defendants No.1 to 4 have produced documentary evidence vid D-List at Exh.26 & Exh.31.

3.1 Ld. Advocate for the defendants No.5 has filed written statement at Exh.15 against the suit as well as injunction application of the plaintiff. In her written statement, defendant No.5 has contended that suit as well as injunction application are not true, hence both are denied in toto. Defendant has narrated the true fact that land situated in the sim of moje Medha, taluka Kadi bearing survey NO.21, old survey No. 15, old survey NO.454A, it's new survey NO.667, old survey NO.455, it's new survey No.666, old survey No.7, it's new survey NO.5, old survey No.66 paiki 1, it's new survey No.54, old survey No.66 paiki 2, its' new survey No.55, old survey NO.65, it's new survey No.53, old survey NO.445 B, its' new survey No.642 out of total lands, partition took place among the brothers in respect of land of survey Nos.65 and 66, in which Patel Prahladbhai

Haribhai, who is the ancestor of plaintiff and defendants No.1 to 4, share devolved to him area Acre-Gundha 0-28 of survey No.65 and area Acre-Guntha 4-05 of survey No.66 and thereafter the death of Patel Prahladbhai Haribhai and his son Patel Vadilal Prahladbhai, names of plaintiff and defendants No.1, 2 3 & 4 were mutated through the heirship entry NO.1502 and thereafter partition of the suit properties took place and area of land Acre-Guntha 2-16 of survey No.66 devolved to Patel Rajnikant Prahladbhai and land of area Acre-Guntha 1-29 of survey No.66 paiki and land of area Acre-Guntha 0-28 of survey No.65 devolved to Patel Savitaben Vadilal, Patel Hiteshkumar Vadilal and Patel Dileshkumar Vadilal for which mutated entry No.1598, dated 13/03/2020 in the revenue record and before certified of the said entry, notice under Sec.135 D issued to all the legal heirs, on which they had made their signatures as well as they have gave their consent reply before the Talati-cum-Mantri. As such, at the relevant time entries in respect of names of Patel Rajnikant Prahladbhai, Patel Savitaben Vadilal, Patel Hiteshkumar Vadilal and Patel Dileskumar Vadilal were mutated as owners and occupiers were in the revenue record. Further, it is submitted that the land of area 0-28-33 of survey No.65 was running in the names of

defendant No.1 to 3 as owners and occupiers over the suit property and defendant No.5 had received the sale consideration amount from defendants No.1 to 3 and thereby defendants No.1 to 3 had sold the suit property to defendant No.5 through registered sale deed, for which mutated sale entry No.2140 and thereby defendant No.5 became the owner and occupier of the said property as such defendant No.5 became the legal bona fide purchaser of the suit property and he has legal ownership and occupation over the suit property. Further, it is contended that plaintiff has no prima facie case, balance of convenience is not in favour of the plaintiff and if injunction order be passed in favour of plaintiff then he would be suffered huge loss, which cannot be compensated in terms of money. Hence, suit as well as injunction application of the plaintiff be dismissed with cost.

4. The learned Advocate for the defendant No.6 has passed pursis and adopted written statement submitted by defendants No.1 to 4 as well as defendant No.5.
5. Ld. Advocate for the plaintiff have filed rejoinder affidavit at Exh.18 & at Exh.19. In which they have denied the facts and averments of defendants No.1 to 3 and defendant No.5

stated in their reply and stated that she has prima facie case, balance of convenience is in her favour and irreparable loss not cause to defendant No. 5 & 6, but if not granted then plaintiff would suffer loss. Said counter affidavits, which I have taken into consideration.

6. Considering the pleadings of parties and averments of defendants, the following issues are raised to decide the present Exh.5 application.

#### **ISSUES**

1. Whether the plaintiff has prima facie case in her favour?
  2. Whether the balance of 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. 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.

7.1 Ld. Advocate for the plaintiff has filed the written argument vide Exh.30, which I have taken into consideration. I have also heard Ld. Advocate for the defendants side.

9. In the pleading, it is stated that defendant No.1 who is the widow of brother of plaintiff named Vadilal Prahladbhai and defendants NO.2 & 3 who are the sons of defendant No.1, whereas defendant No.4, who is the brother of plaintiff and defendants No.5 & 6 who are the purchaser of the suit properties. Plaintiff's father expired on 26/6/1998 and on the basis of pedigree and application of heirs names of plaintiff and defendants were mutated vide entry No.1502, jointly as co-owners of the suit properties and same was certified on 12/11/1998. Plaintiff has claimed that she has right of 1/6th share over the suit properties. Defendants No.1 to 4 had without obtaining consent of the plaintiff, mutated illegally partition of the suit properties in respect of land bearing revenue survey No.65 and 66 paiki and mutated entry in the village form No.6 on 13/3/2000 and said entry No.1598 was certified on 20/04/2000.

Plaintiff has pleaded that she has not waived her right nor given in writing in favour of defendants No.1 to 4 about the partition. Plaintiff has claimed that she has right of 1/6 share over the suit properties. Further, it is pleaded that defendants No.1 to 3 sold the lands area in Acre-Guntha 2-17 Hecter-ARE-Sq.mt. 0-98-14 to defendant No.5 through registered sale deed NO.616, dated 22/5/2002 and thereby defendant No.4 illegally purchased the suit land and thereafter land area Hecter-ARE-Sq.mt. 0-97-12 of survey No.66 paiki sold to defendant NO.6 through registered sale deed No.1275, dated 22/4/2009 for which mutated entries No.1719 and 2172 in the village form No.6 respectively. While on the other hand, defendants 1 to 4 denied allegations of plaintiff and stated that partition took place among the brothers in respect of survey Nos.65 and 66, in which Patel Prahladbhai Haribhai, who is the ancestor of plaintiff and defendants No.1 to 4, share devolved to him area Acre-Gundha 0-28 of survey No.65 and area Acre-Guntha 4-05 of survey No.66 and thereafter the death of Patel Prahladbhai Haribhai and his son Patel Vadilal Prahladbhai, names of plaintiff and defendants No.1, 2 3 & 4 were mutated through the heirship entry No.1502 and thereafter partition of the suit properties took place and area of land Acre-Guntha 2-16 of

survey No.66 devolved to Patel Rajnikant Prahladbhai and land of area Acre-Guntha 1-29 of survey No.66 paiki and land of area Acre-Guntha 0-28 of survey No.65 devolved to Patel Savitaben Vadilal, Patel Hiteshkumar Vadilal and Patel Dileshkumar Vadilal for which mutated entry No.1598, dated 13/03/2020 in the revenue record and before approval of the said entry, notice under Sec.135 D issued to all the legal heirs on which they had made their signatures as well as they have gave their consent reply before the Talati-cum-Mantri. As such, partition entry No.1598 was legally certified and thereby lands devolved to defendant No.4 Patel Rajnikant Prahladbhai and defendants No.1 to 3 Patel Savitaben Vadilal, Patel Hiteshkumar Vadilal and Patel Dileskumar Vadilal and at the relevant time entries in respect of their names as owners and occupiers were mutated in the revenue record. The land of area 0-97-12 of survey No.66 paiki was running in the name of defendant No.4 which was owned occupied property and defendant No.4 had received the sale consideration amount from defendant No.6 and sold the suit property to defendant No.6 through legal registered sale deed, for which mutated sale entry No.2172 and thereby defendant No.6 became the owner and occupier of the said property as such defendant No.6 became the legal bona fide purchaser of the

suit property. As such, in the written statement defendant No.5 had stated defendants No.1 to 3 were the owners and occupiers of the land of bearing survey No.65 area Hectore-ARE-Sq.mt. 0-28-33 and land of survey No.66 area Hectore-ARE-Sq.mt 0-89-81 and no other has right and interest over the said suit properties. Further, he has stated that the said suit properties purchased by him from defendants No.1 to 3 through legal registered sale deed No.2140 and thereby his name mutated as the owner and occupier of the suit property in the revenue record. The defendant No.5 has submitted that he is the bona fide purchaser of the suit property. From the record, it seems that defendants No.1 to 3 have produced document mark 31/1 which is a document of partition of the suit properties, in which plaintiff- Manjuben has made her signature that she has no objection if the names mutated as stated in the application. Moreover, plaintiff has made signature in the notice under Sec.135-D. Further, plaintiff has produced a copy of village form No.6 vide mark 3/2 in which survey No.65, 66 parted on 13/3/2000, wherein it is stated that parted the land among Patel Rajnikantbhai, Patel Savitaben Vadilal, Patel Hiteshkumar, Patel Dileshkumar and as per the partition, defendants No.1 to 3 became the owners and occupiers of the suit properties and

they have sold the suit property to defendant No.4 of survey No.65, 66 paiki Acre-Guntha 0/28, area Hector-ARE-Sq.mt. 0/28/33 and Acre-Guntha 1/29 area Hector-ARE-Sq.mt. To defendant No.5 through registered sale deed No. 616, dated 22-5-2022. Defendant No. 5 has stated that plaintiff has waived her right in favour of defendant No.4. Also, plaintiff has waived her right in favour of defendants No.1 to 3 for which mutated entry No.2861, dated 10/04/2000. Further, it is stated that defendant No.4 had sold the suit property of survey NO.66 paiki 2 area Hector-ARE-Sq.mt. 0-97-12 at the cost of Rs.2,00,000/- to him on 22/4/2009 which is produced by plaintiff at mark 3/4. Moreover, against the said sale deeds, plaintiff has not produced any contrary evidence. Present suit is filed in the year 2022 whereas sale deeds of the suit properties executed in the year 2002 and 2009. It is also made clear that after mutation entries made in favour of defendant No.5 & 6, the plaintiff has not raised any dispute before the revenue authority and as per documents produced vide mark 31/1 plaintiff had given consent and waived her right in favour of defendants No.1 to 4. Now, considering revenue records produced on record by both the side, it transpires that plaintiff has not produced any contrary prima facie evidence against the

evidence on record of the defendants. Therefore, plaintiff has not established her prima facie case and balance of convenience is not in her favour and if injunction may not be passed in her favour then she would not be suffered any loss or injury. But, it would amount harm to defendant No.5 & 6, who had purchased the suit properties after paying huge consideration amount to defendants No.1 to 3 & 4. Therefore arguments submitted by plaintiff side are not believable and tenable, while arguments submitted by defendants No.1 to 4 and 5 and 6 are tenable and believable in their favour. Hence, I reply **issues No.1 to 3 accordingly in Negative** and for issue No.4 I pass the following order.

**:: ORDER ::**

1. The present application below Exh.5 of plaintiff is hereby **rejected**.
2. The cost will be in the cause of suit.

Signed and pronounced in the open court on  
06<sup>th</sup> day of May, 2023 at Kadi.

Place Kadi.  
Date 06-05-2023.

**(Jayesh A. Dave)**  
Addl. Senior Civil Judge,  
Kadi, Dist. Mahesana  
[Code No.-GJ00712]