



IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE, KADI,
DISTRICT : MAHESANA.

REGULAR CIVIL SUIT NO. 140 OF 2024

:: Order Below Exh. – 5 ::

1. The plaintiff has instituted the suit for specific performance of agreement to sell and permanent injunction with respect to the old tenancy non-agricultural land bearing Block/Survey No.1229/1 B paiki Acre-1, guntha-4, admeasuring Hect.Acre.Sq.mtrs. : 1-26-14 situated in the sim of Moje : Dangarva, Sub-district : Kadi, District : Mahesana (**herein after referred to as the suit property**).

1.1 **Brief facts of the plaint :**

That, the suit property was once owned and possessed by the lineal ascendants of the plaintiffs – Bhagvanji Fataji. Upon the death of Bhagvanji Fataji, vide entry No.6092/1 names of Dabhi Ghanshyamji Bhagvanji, Dabhi Jashuba Bhagvanji, Dabhi Bairajba Bhagvanji and Dabhi Puriba Wd/o. Bhagvanji has been entered jointly on 17.02.1983. Since then the above four persons becomes the owner and possessor of the suit property and after the death of widow Dabhi Puriba Bhagvanji, her name has been deleted from the revenue record vide entry No.13109. Similarly, after the demise of Ghanshyamji Bhagvanji, heirship entry in the name of Dabhi Vishnuba Ghanshyamji vide revenue entry No.12875 has been mutated. During the ownership of the plaintiffs, promulgation of the suit property has been carried out vide entry No. 11474 and consequently, Survey No.1229/1/B paiki 1 was renumbered as re-survey No.2218 admeasruing 1-14-20 and out of this resurvey numbered suit property, part of the suit property admeasuring 0-76-13 has been conveyed by the plaintiff to Patel Arvindbhai Madhabhai and Dipak Madhabhai in the consideration of Rs.21,32,000/- vide

registered sale deed No. 12453/2023 dated 20.06.2023 and consequently, revenue entry No.13258 dated 20.06.2023 has been entered in the revenue record. After the mutation of legal heirs including the plaintiffs vide entry No.6092/1 dated 17.02.1981, the lineal ascendants of defendants have executed registered sale deed No.169 dated 23.02.1981 wherein the Ghanshyamji Bhagvanji was the only name as seller mentioned in the sale deed. The said sale deed has been into the joint name of the plaintiffs as well but consent of plaintiffs has not been taken while executing the said registered sale deed. Similarly, Ghanshyamji Bhagvanji without the consent of the plaintiff, has executed another sale deed vide Sr. No.884 dated 09.06.1982. The defendants, after the period of 40 years have filed RCS No.124/2023 against the plaintiffs for the declaration and permanent injunction and cancellation of the registered sale deed executed in the year 2023. If the injunction in favor of the plaintiffs would not be granted then the interest of the plaintiffs shall be extinguished by further sale transactions. Under such circumstances the plaintiff constrained to file the suit and during the pendency of the suit, plaintiff has filed the present application Exh.5 to get temporary injunction against defendants. To avoid repetition, contents of application vide Exh.5 are not discussed herein again.

Cause of action for the plaintiff firstly arises when the defendants files the RCS No.124/2023 against the plaintiffs for the declaration and permanent injunction.

- 1.2 In support of the version of the plaint, the plaintiff has filed the following documents :

Sr.No.	Description of document	Mark
1	Copy of village form No.7 for survey No.1229/1B/paiki 1, Re-survey No.2218	3/1
2	Copy of village form No.7/12 of the year 2003-04	3/2
3	Copy of village form No.6-Haq patrak for entry No.6092/1	3/3
4	Copy of village form No.6-Haq patrak for entry No.13109	3/4
5	Copy of village form No.6-Haq patrak for entry No.13258	3/5

6	Copy of sale deeds produced vide Sr.No.6 & 7 in RCS No.124/2023	3/6
7	Copy of sale deeds executed in the year 1981	3/7
8	Copy of sale deeds executed in the year 1982	3/8

2. Process was duly served upon the defendants and defendants remained present before the Court through their Ld. Advocate and filed their reply vide Exh.17 whereby the defendants have denied in totality the contentions of the plaintiff. The defendants have contended that all the rights and shares of the plaintiff No.1- Jasuba Bhagvanji, (2) Dabhi Bairajba Bhagvanji and (3) Dabhi Puriba Ghanshyamji have been relinquished in favor of Ghanshyamji Bhagvanji vide revenue entry No.6093 which has been duly certified by the revenue authorities. Such entry is mutated in Village Form No.6 as well. At the time when registered sale deed of the suit property dated 23.02.1981 and 19.07.1982 have been executed in the name of the common ancestors of the defendants, the name of Ghanshyamji Bhagvanji was running in the revenue records. Due to the illiteracy and lack of legal knowledge, the registered sale deeds were left unmutated and same was not reflected in revenue entry No.6093. Plaintiffs by taking advantage of the lapse of unmutated registered sale deed in the revenue record have sold the suit property to patel Arvindkumar Madhabhai dated 20.06.2023. Defendants have taken the objection against the un-certified entry No.13258 which purport to mutate the sale deed executed on 20.06.2023. Prant Executive Magistrate vide order No.RTS/Takrari/Case No.241/2023 has rejected the entry No.13258. Defendants immediately after knowing that sale deed has been executed on 20.06.2023, filed the RCS No.124/2023 before the Court which is still pending.
- 2.1 In addition to above, the defendants have submitted that, plaintiff has no prima facie case and balance of convenience is not in favour of the plaintiff, if the injunction order granted in favour of the plaintiff then defendants have to suffer huge loss which may not be compensated in terms of money, hence suit as well as

injunction application of the plaintiff are liable to be dismissed with cost and requested to give compensatory cost of to the defendants.

3. Heard the Ld. Advocate for the parties.
4. Perused the material produced on record and considering the pleadings of the Ld. Advocate for the plaintiff, following issues have been framed to decide the present application below Exh.5 : -

:: ISSUES ::

1. Whether the plaintiff have a prima facie case in their 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 ?

4.1 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 ::

• **Issue Nos.1 to 3 :-**

5. 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.

5.1 Looking to the facts pleaded in the plaint, it is admitted by the plaintiffs that ; after demise of the common ancestor Dabhi Bhagvanji Fataji suit property has

been vested co-jointly among Ghanshyamji, defendant No.8 and plaintiff No.1 vide succession entry No.6092/1, suit property has been conveyed to common ancestor of defendants Nos. 1 to 7 vide registered sale deed executed in the year 1981 and 1982.

- 5.2 Failure of plaintiff ; to account for the entry No.6093 in the revenue records, to account for the order passed by the Prant Executive Magistrate vide No.RTS/Takrari/Case No.241/2023, make the plaintiffs liable for suppressing the material facts. Non-impleadment of such material facts does not make the case of plaintiff as a prima-facie case.

As a prima facie case is not established by the plaintiff then rest of the two elements of temporary injunction need not to be discussed.

Upon the strength of above facts & circumstances and the settled principles of law, court passes the following order.

:: Final Order ::

- 1) The present Injunction application below Exh.5 is rejected.

Pronounced in the open Court today on this 22nd day of the Month of August, 2025 at Kadi.

Place :Kadi.
Date: 22.08.2025

(Arya Ram Kumar)
Additional Sr. Civil Judge,
Kadi, District : Mahesana.
(GJ 01324)