

ORDER BELOW EXHIBIT - 5 IN R.C.S NO.265/2021

1. Read the application and heard the Ld. Advocate for the plaintiffs. Also heard the Ld. Advocate for the defendants.
2. The plaintiffs have filed present suit for declaration for permanent right of path/way to enter into the survey No.467 in the Anmolgreen Society through vehicles etc. in the middle of Alaknanda Society Vibhag-A in which situated house and plot Nos.61, 62, 63, 64, 65 and 66, 67, 68, 69, 70 have path way 6-09 mt. i.e 20 feet East-West wide and North-South long Nani Kadi, Taluka Kadi survey No.462 paiki land that members of society of Anmolgreen and plaintiffs have permanent lawful path-way and said path-way shown in the handmade sketch through yellow colour. **(for short and convenience hereinafter referred to as 'suit path/way')** and also asked for permanent injunction against defendants.
 - 2.1 Further, it is averred that the property of survey N0.462 situated moje Nani Kadi, Taluka Kadi which was granted for N.A. for residential purpose vide order No.Mahesool-A/L.N.A/S.R./73/90-91, dated 6/3/1991 by the District Development officer, Mahesana, in which Alaknanda Society divided into three part such as, A-Division, B-Division and C-Division and there is located houses and plots. It is further stated that land bearing survey No.467, situated moje Nani-Kadi, Taluka Kadi for which

order No.J.P./Mahesool-A/L.N.A./Vashi/449 to 456/12 is granted for N.A. for residence by the District Development Officer, in which made 35 plots and said society known as Anmolgreen Society. In which bungalow No.35 is of plaintiff NO.1, bungalow No.16 is of plaintiff No.2, bungalow No.8 is of plaintiff No.3, bungalow No.29 is of plaintiff No.4, where plaintiffs and other members of the Anmolgreen are residing and all the management done by the plaintiffs. It is further submitted that in the A-Division of defendant No.1 has two plots 61, 62 which are opened, defendant No.2 has plot No.63 where there is a house, defendant No.3 has plot NO.64, whereas in plot No.65 there are two houses, in which 65/A where there is house of defendant No.4 and 65/B where there is house of defendant No.5 and in the plot No.66, defendant No.6 constructing two houses and defendant No.6 has housed in plot No.67/A, defendant No.7 has house as well as plot No.68/B, defendant No.8 has house as well as plot No.68/A, defendant No.9 has house as well plot NO.69, defendant No.10 has house as well as plot NO.70, whereas defendant No.11 has house. Defendants have not made construction as per measurement of the plot/s and they have constructed in the margin land and made two houses in one plot and made encroachment and did not take permission for such construction. It is further stated that the plaintiffs and

members of other residential societies have path-way to and fro from Anmolgreen Society through, Nani Kadi, Taluka Kadi via Kadi-Kalyanpura Road via end of Monika Society via R.C.C. Pakka road west side in the north-south via north-south side road adjoining to Alaknanad Division-A where there are plots-houses of Division-A is located, in which there are plots and houses are there for which the plots and houses namely plot Nos.61, 62, 63, 64, 65 and 66, 67, 68, 69, 70 have path way 6-09 mt. i.e 20 feet East-West wide and North-South long Nani Kadi, Taluka Kadi survey No.462 paiki land that members of society of Anmolgreen and plaintiffs have permanent long path-way and no other alternate path-way is available and at the relevant time in the N.A. permission of survey NO.462 paiki lay-out plan, the usage of path-way is for the land owners of survey No.467 area Hector-ARE-Sq.mt. 0-52-32 for which entry No.12996, dated 19/11/11 is mutated and same was certified on 26/12/2011. Thus, the permanent path-way of plaintiffs residents of Anmolgreen and other residents houses is from Alaknanda Division-A for which it is highlighter by yellow colour in the plaint. Also, defendants have no right to make slop or placed vehicles in the suit path-way, despite of fact, defendant Nos.2, 4, 5 and 8, 11 have illegally, unauthorizedly without permission made encroachment in the suit-

pathway and upon request made by the plaintiffs, they have gave threat and denied plaintiffs about the suit path-way for usage. Hence, present suit is filed to get permanent injunction order that defendants or their persons not to obstruct, interfere or object to plaintiffs while using the suit path-way and asked for restitution of right for usage of the suit path-way as described relief in para(11) of sub-para(1) to (4) and cost of the suit from the defendants. To avoid repeatation contents of Exh.5 application are not re-produced again. Plaintiffs prayed to pass an injunction order against defendants and in favour to plaintiffs that defendants not to obstruct or disturbed to plaintiffs while lawful using the suit path-way till the final disposal of the suit and other relief as Hon'ble Court may deem fit and proper.

3. Upon receiving of summons/notices defendants No.3, 4 to 11 are remained present through their Ld. Advocates and filed W.S. at **Exh.20**. In their W.S. they have stated that suit as well as injunction application are not true and legal, hence both are liable to be dismissed. Further, it is contended that the suit as well as injunction application are barred by the mis-joinder and non-joinder of the parties and also barred by the res-judicata as well as principle of estopple and principle of natural

justice as well as provision of the registration Act, hence suit as well as injunction application of the plaintiff are liable to be dismissed. They have narrated true facts that, defendants having their own houses, plot in the survey No.462 moje Nani-Kadi, Taluka Kadi. Land bearing survey No.462 has been made N.A. vide Order No.Mahesool-A-L.N.A-S.R.-73-90-91, dated 06/03/1991 and made non-agriculture for the residential purpose and as per the lay-out plan common plot, internal road of the survey No.462 became the ownership of all the plot holders of the survey No.462 and before converted the land for residential purpose, there was no path-way pass through the survey No.462, as such defendants and their predecessors and holders of the survey No.462 kept on sell after due verification of the lay-out plan and order and plot holders of survey No.462 have not given or transfer the right to the owners of the survey No.467 to ingress and egress through the path-way. It is further submitted that despite of having facts, plaintiffs and their predecessors out of knowledge of the defendants and holder of the survey No.467 created false and illegal path-way through the common road and land of common plot which is not binding to them. It is further submitted that defendants have kept internal path-way for their house holders and they have right, but no other parties have

right, interest to pass through it, but plaintiffs have created false and fabricated facts and stated that defendants have illegally constructed and made encroachment and filed the false suit against them. It is further submitted that if the defendants unlawfully and contrary to the order of non-agriculture and made illegal construction then created such false contrary to the act, they can asked relief under the provision of Revenue Act before the proper and competent authority, but instead of doing proper procedure, they have misleading the Hon'ble Court and kept Hon'ble Court in dark and filed the false suit as well as injunction application to created new rights in their favour, hence present suit as well as injunction application of the plaintiffs are liable to be dismissed with cost and special cost Rs.5,00,000/- be awarded to defendants from plaintiffs.

4. In support of the pleadings, the plaintiffs have produced document vide D-list Exh.3 and also produced the panchnama at mark 8/2 and handmade sketch map of disputed path-way at mark 8/3.
5. 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 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 : **Partly in affirmative.**
 - (2) Issue No.2 : **Partly in affirmative.**
 - (3) Issue No.3 : **Partly in affirmative.**
 - (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.

7.1 The plaintiffs come with the pleading that they are having residential house in the Anmol Green Park Society and some of defendants are having open plots and some of defendants have residing in the Alaknanda Society and defendants are trying to encroach over the suit path-way by making illegal extra construction in their plots and putting vehicles which creates hurdle and

obstruction for the residents of Anmolgreen Society. The plaintiffs have produced document vide D-list Exh.3 and as per mark 3/7, mentioning of suit path-way is described in revenue record. But, as per averments of the defendants that the present defendants have not created any official Co-operative Society and not members of that Society. Also, in earlier there was an agreement done between builders and from bogus contract, plaintiffs have made entry into revenue record which is produced vide mark 3/7. The so called path-way is owned all residents of Alaknanad Society and no other persons then the Society members of Alaknanda Society have no right to use the said path-way. The members of Alaknanda Society have made legal construction on their plots and some plots are yet open.

8. Now considering averments of both sides, it is an admitted fact that, plaintiffs' Anmolgreen Park Society and defendants' Alaknanda Society are situated adjoining to each other. The plaintiffs are claiming their right over suit path-way, while defendants are claiming that the so called suit path-way is of the ownership of members of the Alaknanda Society and plaintiffs have already another path-way for ingress and egress into their Anmolgreen Park Society. Moreover, the allegations of plaintiffs regarding encroachment or putting any

obstruction/hurdle over the suit path-way are not supported by any *iota* of evidence. Therefore, the issue involved between both parties regarding the suit path-way, can only be decided during the trial by taking evidence at length. Meanwhile, to decide the entire suit it will take too much time and therefore at this juncture, the position to maintain *status quo* in respect of suit path-way then nobody will suffer any irreparable loss or injury or any harm, hence I reply issues No.1 to 3 accordingly **partly in affirmative** and for issue No.4 I pass the following order.

:: ORDER ::

- 1.The present Exh.5 application of the plaintiffs is hereby **partly allowed**.
- 2.Both parties of this suit are hereby ordered and directed to maintain ***status quo*** position of the suit path-way which is described in para-5 of Exh.1, till final disposal of this suit.
- 3.The cost will be in the cause of suit.

Signed and pronounced in the open court on 11th day of January, 2024 at Kadi.

Place: Kadi.

Date: 11-01-2024.

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