



ORDER BELOW EXH. 8 IN RCS 12/2025
APPLICATION UNDER ORDER 39 OF CPC

1. Perused the application and other documents on record. Heard the submissions made by the Ld. Advocate of the defendant-applicant (Defendants no. 1 to 3) Mr. M. H. Gandhi. No one had appeared for the plaintiff-respondent when the case was called out for arguments, hence have not been heard. Additionally the suit has proceeded ex-parte against defendant no. 4 being ONGC (Land Acquisition Department).

The present application has been preferred by the defendants under the provisions of Order 39 Rule 1 & 2 of the Code of Civil Procedure Code (CPC) for granting an interim injunction along with their counter-claim filed against the plaintiffs in a suit which has been filed by the plaintiff for declaration and injunction.

Brief facts of the suit

2. As per the facts pleaded in the plaint, the suit property comprises land situated at Village Taluka Jotana, Mahesana, originally bearing Old Survey no. 1243, subsequently renumbered as Survey no. 193 and recorded as Survey no. 1495 at the time of acquisition by ONGC, which belonged to Nathiben Usmanbhai Sipahi, who had entered into an agreement dated 02/02/1981 with ONGC for temporary acquisition under which she was to receive rent. Nathiben thereafter, from 17/04/1996 onwards, paid the rent amount to the plaintiff as he is her brother, pursuant to a written agreement executed in 1996 conferring upon him the right to receive rent. Nathiben passed away on 27/04/2018, and thereafter defendant nos. 1 to 3 prepared an incomplete certified family

tree and on that basis procured mutation of revenue Entry no. 5281 dated 11/10/2024 in Khata no. 116 in their favour, although the property, inherited by Nathiben from her father, ought not to have devolved upon them in this manner. Relying on the said mutation entry, defendant nos. 1 to 3 approached defendant no. 4, ONGC, seeking to have the rent paid to them, of which notice dated 10/03/2025 was received by the plaintiff and therefore the cause of action has arisen in favour of the plaintiff.

The summons of suit were served to the defendants and they appeared through their Ld. Advocate and thereafter the written statement along with counter-claim was submitted by them vide Exh. 7. In their reply cum counter-claim they have pleaded that the suit property belonged to Nathiben Usmanbhai Sipahi, who died on 27/04/2018, and upon her death the revenue records were duly mutated in the names of defendant nos. 1 to 3 by Entry no. 5281. The plaintiff, taking advantage of Nathiben, who was his illiterate sister, obtained from her the right to receive rent without the knowledge of defendant nos. 1 to 3. After becoming aware of this, defendants nos. 1 to 3 informed defendant no. 4, ONGC, of their status as owners through application dated 19/11/2024, whereupon the payment of rent to the plaintiff was stopped. It is further stated that the suit property has been acquired by ONGC for public purposes, and that the plaintiff has similarly deceived the other two sisters of Nathiben, for which a separate suit has also been instituted. And it is for these reasons that the plaintiffs suit is without merit and ought to be dismissed. Additionally in their counter-claim they have sought that rent from defendant no. 4 be given to them and a declaration be made that the plaintiff is liable to compensate the defendant nos. 1 to 3 for arrears of rent with interest from date 17/04/1996 which they have wrongly acquired.

3. Along with this written statement & counter-claim, the defendants have preferred the present application wherein they have invoked order 39 rules 1 & 2 of the CPC and prayed that an interim injunction be granted against the plaintiff from getting rent amount from defendant no. 4 during the pendency of the suit.

Submissions of the Defendant nos. 1 to 3 - Applicants

4. The defendants have submitted that The defendants submit that the suit is devoid of merit, as the suit property originally belonged to Nathiben Usmanbhai Sipahi, who passed away on 27/04/2018, and upon her death the revenue records were lawfully mutated in favour of defendant Nos. 1 to 3 by Entry No. 5281. It is contended that the plaintiff, taking undue advantage of the illiteracy of Nathiben, his sister, procured from her an arrangement for receipt of rent without the knowledge or consent of her legal heirs, and such arrangement cannot confer any legal right upon the plaintiff against the true owners. The defendants further argue that once they notified defendant No. 4, ONGC, of their ownership, ONGC rightly stopped making payment to the plaintiff. The defendants additionally submit that the plaintiff has engaged in similar conduct with respect to the other two sisters of Nathiben, for which separate proceedings are pending, thereby showing that the present suit is an abuse of process intended to unlawfully extract monetary benefit. Therefore, as per the defendants they have established their prima facie case. The balance of convenience is in their favour and the injunction if not granted, will cause irreparable loss to them.

Submissions of the Plaintiff-Respondent

5. The plaintiffs have failed to advance any arguments against the

present application despite the fact that this application was kept for hearing for multiple dates.

Plaintiff has however produced a documentary evidence list to support their claims vide Exh. 3 having 7 documents, the documents therein have been marked. Mark 3/1 is a photocopy of notice by defendant no. 4 to plaintiff dated 10.03.2025. Mark 3/2 is a photocopy of declaration of acquisition of suit property dated 02/02/1981. Mark 3/3 is a photocopy of consent letter dated 17/04/1996. Mark 3/4 is a photocopy of consent letter in front of talati dated 04/02/2005. Mark 3/5 is a photocopy of the family tree of defendants. Mark 3/6 and 3/7 are revenue records of the suit property.

Issues to be decided

6. Since the present application has been filed by the defendant along with a counter-claim, and as per Order VIII Rule 6A(4), the counter-claim is to be treated as a plaint; the issue of whether the defendant can pray for interim injunction will not arise and this application can be appreciated as if it has been filed in a suit in capacity of a plaintiff by the defendant.

Looking at the facts of the Exh. 8 application, suit, Order 39 Rule 1 & 2 of C.P.C. and the arguments advanced by the Ld. Advocate for the plaintiff as well as the defendants, the following issues emerge for determination of the Exh.5 application :

- a. Whether the defendants prove that, they have a prima facie case?
- b. Whether the defendants prove that, the balance of convenience is in their favour?
- c. Whether the defendants prove that, if the interim injunction as prayed is not granted they would suffer irreparable loss?

d. What is the order?

My answers to the above issues

- a. Affirmative
- b. Negative
- c. Negative
- d. As per final order

Reasons for the above findings

7. Since the Issues A to C are co-related with each other, reasons for the answers for issues A to C are discussed together to avoid duplications of facts.

8. Before appreciating the facts and submissions of the parties, the jurisprudence in deciding temporary injunctions as per order 39 of CPC as laid down by our Hon'ble Supreme Court needs to be looked into. In the landmark case of **Dalpat Kumar v. Prahlad Singh, AIR 1993 SC 276**, a Division Bench of our Hon'ble Supreme Court held that :

“5. ...Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The court further has to satisfy that non-interference by the court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the Injury must be a material one, namely one that cannot be adequately compensated by way of damages. The balance of convenience must be in favour of granting injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief

or injury which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. The court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

(Emphasis Supplied)

9. In another landmark case of **Ashwinbhai Somabhai Patel v. Nrugendraprasadji Jaendraprasadji Pandey, SCA 5048 of 2009**, our Hon'ble Gujarat High Court has held that :

*"16. ...Thus, considering the submissions made on behalf of the respective counsels recorded herein above; considering the impugned order passed learned trial court and considering the provision of the order 39 rules 1 and 2 and the relevant provisions of the indian evidence act and code of civil procedure with respect to proving the document at an appropriate stage and the decision of the andhra pradesh high court in the case of **S.Ravindraran vs G. Dasrath - 2004 (4) ALD 851** it is to be held that at the stage of deciding the application exh. 5 for interim injunction the court can look into the supporting affidavits and the documents produced along with the application exh. 5 and/or produced along with reply to the interim injunction application for the purpose of finding out a prima facie case and at that stage a detailed inquiry with respect to admissibility of those documents in evidence is neither permissible nor warranted. The admissibility of the documents in question are required to be considered and proved at an appropriate stage considering the provisions of code of civil procedure as well as Indian evidence act. If at all a decision or interim injunction is based upon certain document and if the aggrieved party is of the opinion that such document ought not to have been taken into consideration while considering the prima facie case in that case aggrieved party can very well make out a ground in the appeal before the higher forum. But a detailed inquiry with respect to admissibility of the documents in evidence, at the stage of deciding interim injunction under order 39 rules 1 and 2 is not required to be conducted. It cannot be disputed that even without production of any documents even on affidavits learned trial court can form an opinion on prima facie case while*

deciding the interim injunction.”

(Emphasis Supplied)

10. The primary basis on which the defendant is relying for relief under this application is the fact that they are the legal heirs of Nathiben Usmanbhai Sipahi, a fact which is accepted by the plaintiff as well. The disagreement is with regard to devolution of the suit property but the plaintiffs have not established their chain of devolution, which is clearly apparent of the defendants. The plaintiffs have vaguely stated that the defendants 1 to 3 are not entitled to the suit property, but have not specified the reason with specificity nor stated who ought to be the true owner. So the court concludes that the defendants have a prima facie case. From the letter at mark 3/1 and the submissions of the Ld. Advocates for the parties, it is also apparent that the ONGC has stopped paying rent to anyone for the time being so the balance of convenience of not granting this injunction is not made out in favour of the defendant. And finally there is no question of irreparable loss being caused to the defendant because as the judgment of **Dalpat Kumar v. Prahlad Singh, AIR 1993 SC 276** clarifies that it is a kind of injury which cannot be compensated in terms of money. The amount of rent due to whomsoever can be given at the final outcome of the suit and additional damages can be compensated in terms of money.

11. In the case at hand, as mentioned above, defendant-applicants have established their prima facie case. However they have failed to establish that the balance of convenience is in their favour and that they will suffer irreparable loss which cannot be compensated to them in terms of money. In view of above deliberation, issue at A is replied to in affirmative; B & C are replied to in Negative. Based on the above appreciation, this court passes the final order as under :

-:: FINAL ORDER ::-

1. The Exh. 8 application under order 39 of CPC of the defendants in RCS 12/2025 is hereby rejected.
2. No order as to costs.

Pronounced in open court on date 11/12/2025.

Date: 11/12/2025

**Place: Jotana,
Dist. - Mahesana**

(SAUMITRA BHADAURIA)

**Principal Civil Judge,
Jotana**

GJ01691