

**Order below Exhibit-5**

1. The plaintiff has preferred this application seeking temporary injunction against the defendants vide Exh-5.
2. The present suit has been instituted by the plaintiff seeking prayers of Cancellation of Registered Sale deeds and permanent injunction against defendants. In this suit, the plaintiff has prayed cancellation of Registered sale deeds bearing Reg. Sr. Nos.1015 dated 27.04.2021 & 2078 dated 09.09.2022 and also prayed permanent injunction against defendants for the lands bearing R.S. nos.117 paiki 2, 142, 150, 152/1 and 344/2 of moje Village Jivapar, Taluka Tankara & District Morbi (**hereinafter referred as 'suit lands'**).
3. Along with the suit, plaintiff has filed this application seeking temporary injunction against the defendants and has prayed that defendants be restricted in creating hindrances to the plaintiff in entering suit lands & creating hindrances in joint-possession of the suit lands of the plaintiff and be restricted to transfer suit lands and be restricted in creating charge over suit lands till pendency of this suit.

4. Summons and notices were duly served to the Defendants. The Defendants appeared through their Ld. Advocates before this court. However, even after ample opportunities have been provided to the defendants, the defendants have not filed their written statement in this suit and therefore, their right to file written statement was closed on 09.10.2024. Thus, there is no written statement of the defendants on record in this suit.
5. The plaintiff has filed documents vide mark-3/01 to 3/10. The Defendants have not yet produced any document in this suit.
6. The written arguments submitted by the plaintiff vide Exh-14 is gone through in detail. The defendants or their Ld. Advocate were not remained present at the stage of arguments. Therefore, their right of arguments for this application was closed vide passing order below application filed by the plaintiff vide Exh-15.
7. This is an application for temporary injunction and there are three basic principles for granting or refusing temporary injunction. The said principles are:
  - (i) Prima facie case in favour of the party seeking injunction,

- (ii) Balance of convenience in favour of such person and last;
- (iii) There must be irreparable loss which is likely to be caused to party if injunction is not granted to such person.

An injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of equity and the peculiar facts and circumstances of the case. Apart from these three basic principles, the court is also required to see the conduct of party seeking equitable relief of temporary injunction.

8. Furthermore, before entering in further discussion, this court humbly believes that it is much worthy to have a look at observation of the Hon'ble Apex court in **Shiv Kumar Chadha ETC v. Municipal Corporation of Delhi, 1993 SCC (3) 161**, in which the Hon'ble Apex court observed that 'a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiffs only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an

irreparable loss or damage will be caused to the plaintiffs during the pendency of the suit.' Thus, it is clear that grant of injunction is within the discretion of the court and a party is not entitled to an order of injunction as a matter of right.

9. In this matter, it appears that the main contention of the plaintiff is that the suit lands are in their joint-possession & joint-ownership with the defendants. However, the defendants have without informing & without taking consent of the plaintiff executed Registered sale deeds bearing Reg. Sr. Nos.1015 dated 27.04.2021 & 2078 dated 09.09.2022. It is claim of the plaintiff that the suit lands are coparcenary properties and the defendants have no right to deal with this suit lands without informing & without taking consent of the plaintiff and therefore, sale deeds bearing Reg. Sr. Nos.1015 dated 27.04.2021 & 2078 dated 09.09.2022 are null and void as it is executed without information & consent of the plaintiff. Thus, the plaintiff claims joint-ownership and joint-possession of the suit lands and thereby on the basis of this claim of joint-ownership and joint-possession she seeks protection from this court by way of this application.

10. On the other hand, the defendants have neither filed their written statement nor there is any submission on their side regarding this application.
11. Looking to the plaint, application for temporary injunction, the documents filed by the plaintiff and the arguments advanced by the Ld. Advocate of plaintiff, it is clear that plaintiff has not bothered to bring the actual position of the suit lands on record. It is clear that name of defendant no.1 is running in some of the suit lands and as stated above registered sale deeds for some of the suit lands are also executed in favour of the defendant no.2. The Plaintiff has claimed that the suit lands are coparcenary properties and suit lands are in her joint-possession with the defendants. However, except making bare averments the plaintiff has not produced any cogent evidence regarding this claims. On the other side, case of the defendants are supported by the revenue records and registered sale deeds, which has been filed by the plaintiff. As per **Section-135J of the Gujarat Land Revenue Code**, the entries in records of right and entry in register of mutation are presumed to be true unless contrary is proved or a new entry is lawfully substituted.
12. Now, injunction being an equitable relief, to succeed

in this application, first of all the plaintiff should establish her prima facie case. The plaintiff has by this application claimed that the possession of the suit lands is jointly held by the plaintiff & the defendants and this suit lands are coparcenary properties. However, the plaintiffs have failed to establish their joint-possession over the suit lands. There is nothing on record which could establish that the suit lands are in actual joint-possession of the plaintiff and this suit lands are coparcenary properties.

- 13.** By this application the plaintiff has come before this court for equitable remedy, thus the burden lies upon the plaintiff to produce cogent evidence to support her claim. However, throughout this proceeding the plaintiff side is failed to bring actual position of the suit land on record by way of cogent evidence. The plaintiff side could have brought these details on record at the time of filing of this suit or even later with cogent evidences. The plaintiff could have preferred to get the help of Court Commissioner and it is needless to say that such remedy is available under Civil Procedure Code. But, the plaintiff has chosen otherwise and except making plain averments the plaintiff has not bothered to bring the actual position of the suit land on

record at any point of time. There is nothing on record which could establish the claims of the plaintiff and possession of the plaintiff over the suit lands. Therefore, in this proceeding a grave lacuna is left in the claims of the plaintiff and thereby, it does not entitle the plaintiff to get any kind of relief under the gist of this application at this stage.

- 14.** There are lacunas in the claim of the plaintiff and whatever is produced or submitted by the plaintiff are not at all conclusive or cogent enough to be relied upon. Therefore, in view of the aforesaid discussion of law and facts, it transpires to this court that the plaintiff has failed to establish prima facie case in her favour against the defendants. Prima facie case is the first, basic and the most important ingredient to grant the application on hand. And it is well settled law that a person is not entitled to equitable remedy of temporary injunction even if balance of convenience and irreparable loss is in his favour if he fails to establish prima facie case. In **Kashi Math Samsthan v. Srimad Sudhindra Thirtha Swamy, AIR 2010 SUPREME COURT 296**, the Hon'ble court observed that '13. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such

injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.' So, there is no need to consider aspect of balance of convenience and irreparable injury. Therefore, the plaintiff is not entitle to get any kind of relief under the gist of this application at this stage and therefore the plaintiff do not deserve to get any decision of this court at this juncture, except the decision which follows hereby.

- 15.** Therefore, in view of the aforesaid reasons, this court declines to grant an application for temporary injunction filed by the plaintiff and any other possible reliefs under this application. Thus,

R.C.S. No. 20 of 2024

considering all above aspects, following order is passed in the interest of justice.

**O R D E R**

The application for temporary injunction is hereby rejected.

Cost will follow the suit cost.

Pronounced today on this 16<sup>th</sup> day of April, 2025.

Date:16/04/2025

Place:Tankara

(S.G. Sheikh)  
Principal Civil Judge,  
Tankara  
Code: GJ01615