

**IN THE 3<sup>rd</sup> ADDITIONAL DISTRICT COURT AT NAVSARI**

**REGULAR CIVIL APPEAL NO. 02 / 2024**

**Appellant :-**

Kishorbhai Bhikhubhai Patel

**VERSUS**

**Respondents :-**

Hemantbhai Mukundray Desai and Ors.

**Appearance:**

Mr. A.T.Kasad, Ld. Advocate, for the appellant.

Mr. B.C.Suthar, Ld. Advocate, for the respondent no.1

**ORDER BELOW EXHIBIT 4:-**

[1] The present application has been moved by the appellant alongwith appeal under Order 39 Rule 1&2 of C.P.C for seeking interim injunction.

[2] Briefly, the appellant has filed appeal being aggrieved and dissatisfied with the judgment and decree passed by the Ld. Additional Senior Civil Judge, Chikhli in Regular Civil Suit No.132/2015 dated 12.12.2023, wherein the Ld. Trial Court dismissed the suit and allowed the counter claim filed by the defendants and passed the preliminary decree of the suit property in favour of the defendants.

[2.1] Learned Counsel for the appellant has contended that the the preliminary decree dated 12.12.2023 passed by the Ld. Trial Court is

illegal, improper and incorrect and has been passed without properly appreciating the fact and evidence of the instant case. It is also the say of the Learned Counsel that if the effect and operation of the impugned order is not stayed during the pendency of this appeal, then his appeal shall become infructuous which shall cause irreparable loss to the appellant herein. It is also the say of the Learned Counsel that during the pendency of the Civil Suit in question, there was a 'status-quo' order of the Learned Trial Court concerned which has been extended later on till the filing of this Regular Civil Appeal before this court. It is, thus, prayed by the Learned Counsel for the appellant that this application at Exh.5 be allowed and the parties to the appeal be directed to maintain the status-quo till the final disposal of this appeal.

[2.2] It is further submitted that, the appellant has prima facie case and if the judgment and decree are not stayed, irreparable loss will be caused to the present appellant which cannot be compensated in terms of money. It is further submitted that, the suit property was owned by late Sudhaben wd/o of Manubhai Chhotubhai Desai who died issuess on dated 04.12.2014 and late Sudhaben during her lifetime had executed a registered Will in favour of the plaintiff/appellant. Therefore, by virtue of the said Will the appellant is entitled to the property of late Sudhaben. The Ld. Trial Court had passed the preliminary decree wherein the Revenue Authorities have been requested to comply the decree dated 12.12.2023 within 60 days. In that case, the respondent may further transfer the suit property by way of

sale, lease mortgage etc. which may cause multiplicity of litigation. The suit property is the subject matter and present appeal would become infructuous and meaningless, therefore, under such circumstances, the injunction order is required to be granted till final disposal of the appeal. The appellant has prayed to stay the implementation, operation and execution of the impugned judgment and decree dated 12.12.2023 passed by the Ld. Additional Senior Civil Judge, Chikhli in Regular Civil Suit No.132/2015 below Exh.152 pending the admission, hearing and final disposal of the appeal.

[3] Summons and notice, were duly served to the respondent no.1/caveator. L.A for the respondent appeared and but not filed any objections to Exh.4 and orally argued while denying all facts and averments of the appellant's case and submitted that appellant/plaintiff has no locus standi to file present appeal. It is further submitted that plaintiff has not come to the Court with clean hands and has suppressed the material facts and he further submits that the suit property is the ancestral property of the respondents and late Sudhaben. He further submits that, the grandfather of the respondents was the owner of the suit property and after his death the suit property was inherited by their father and his brother late Manubhai Chhotubhai. Manubhai Chhotubhai died intestate in the year 1987, he died issueless leaving behind his widow late Sudhaben and his brother late Mukundray Chhotubhai as his Class-1 heirs and the mutation was also entered on their names regarding the property of

late Manubhai Chhotubhai which was never challenged by late Sudhaben during her lifetime. It is further submitted that late Sudhaben never executed any alleged Will nor she had any right to execute the alleged Will since the property was the ancestral property. It is further submitted that, the appellants belong to different community nor they are related to late Sudhaben therefore the question of executing the alleged Will in their favour does not arise at all. Hence, the plaintiffs/appellant had no right, title or interest in the suit property hence present application is liable to be dismissed.

[4] I have heard the rival submission of the Learned Counsel of both the parties and also gone through the entire record of this case. There is no dispute on the point that while deciding the application at Exh.5, this court is required to look only three factors; viz. prima-facie case, balance of convenience and irreparable loss. Apart from this consideration, this Court is not supposed to go deep into the merits of the case, which shall be ultimately taken into account at the time of final decision of the appeal. With these considerations, the case of the both the parties is now being considered.

[5] I have gone through the impugned order and judgment under challenge wherein the Learned Trial Judge has considered in detail the facts as well as evidence produced on record by both the parties. The appellant has produced list of documents vide Exh.3/1 to 3/20.

Sr.No.	Particulars	Mark
1	Village form no.7/12 of old block no.1149 (new no.1085) situated at Mouje Tankal	3/1

2	Village form no.8A of khata no.994, block/survey no.1149 (new no.1085) situated at Mouje Tankal	3/2
3	Village form no.7/12 of block/survey no.62 (new no.1407) situated at Mouje Tankal	3/3
4	Village form no.8A of khata no.1052, block/survey no.62 (new no.1407) situated at Mouje Tankal	3/4
5	Village form no.6 of revenue change entry no.319	3/5
6	Village form no.6 of revenue change entry no.2194	3/6
7	Village form no.6 of revenue change entry no.5621	3/7
8	Village form no.6 of revenue change entry no.7476	3/8
9	Certified copy of order vide RTS/Revision/Case No. 82/2016 passed by Collector, Navsari	3/9
10	Certified copy of order vide MVV/HKP/NVS/16/2017 passed by Additional Secretary, Revenue Department, Ahmedabad	3/10
11	Copy of power of attorney executed by plaintiff	3/11
12	Receipt of revenue of khata no.994 situated at Mouje Tankal	3/12
13	Receipt of education cess of khata no.994 situated at Mouje Tankal	3/13
14	Receipt of revenue of khata no.1052 situated at Mouje Tankal	3/14
15	Receipt of education cess of khata no.1052 situated at Mouje Tankal	3/15
16	Tax receipt of property no.7, house no.2C situated at Mouje Tankal	3/16
17	Electricity bill of property no.7, house no.2C situated at Mouje Tankal	3/17

18	Xerox copy of registered Will executed during the lifetime of deceased Sudhaben	3/18
19	Copy of stay order of trial court	3/19
20	Certified copy of order passed in RCS No.132/2015 by Ld. Additional Civil Judge, Chikhli	3/20
21	Certified copy of decree passed in RCS No.132/2015 by Ld. Additional Civil Judge, Chikhli	3/21

Admittedly, the suit property was previously owned by Chhotubhai Bhimbhai and after his death the suit property was entered into the name of his son Manubhai Chhotubhai in the revenue records but since the dispute arose between the Manubhai and his brother Mukundbhai the property was partitioned amongst them and their names was entered in the revenue records. After the death of Manubhai Chhotubhai his property was entered in the names of widow namely late Sudhaben and his brother now late Mukundbhai in equal shares. Whether the Will dated 03.01.2013 alleged to have been executed by late Sudhaben is illegal, null and void and does not affect rights of the respondents is required to be decided during appeal. At this stage, we are not going for the appreciation of the evidence or the merits of the case but are only confining ourselves on the issue whether it would be just and proper to stay the operation of the impugned judgment and order or not.

[6] Considering the entire facts and circumstances and the documents placed on record by the appellant, it prima facie reveals that

appellant is the propounder of the Will dated 03.01.2013 of the suit property. Thus, the appellant has prima facie case, balance of convenience and factor of irreparable loss in his favor. Therefore till the appeal is finally decided if execution of the decree of the trial court is not stayed then the appeal would be infructuous and respective authorities will move forward for execution of decree. Therefore, the preliminary decree passed by the Ld. Trial Court is hereby stayed during the pendency of the appeal and till final disposal of the appeal. However it is made clear that nothing observed here shall have bearing or effect on the merits of the case. Hence, following order is passed :-

**ORDER**

1. The appellant's present application below Exh.4 is hereby **allowed** in terms of Para-7 of application and the execution of proceedings under the preliminary decree are hereby stayed during the pendency of the appeal and till final disposal of the appeal. No order as to cost. The present application below Exh.4 is disposed off accordingly.

Signed and Pronounced in the open Court on 24<sup>th</sup> day of January, 2024.

Date: 24.01.2024

Place: Navsari

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Sd/-  
**(PREET KAMAL TIRATH RAM)**  
3<sup>rd</sup> Additional District Judge,  
Navsari.  
(Code No.: GJ01594)