

Order on Application Exh 5 under Order 39, Rule 1 & 2 of the Code of Civil Procedure, 1908

1. This is an application filed by the plaintiff under Order 39, Rule 1 & 2 of the Code of Civil Procedure, seeking a temporary injunction to restrain the defendants from interfering with her peaceful possession of the suit property or creating third-party rights during the pendency of the suit.

The plaintiff has filed the suit seeking a declaration of ownership over the disputed property, permanent injunction, and other related reliefs. The defendants oppose the interim relief and have filed their objections, contesting the plaintiff's claims.

2. Facts of the Case:

The facts as laid down by the plaintiff are summarized as follows:

1. The plaintiff submits that defendant No. 1, a resident of Kotaba, Ahwa, Dang, approached her in the year 2008, stating that he was facing severe financial difficulties and was unable to engage in farming due to his old age. He also mentioned that his daughter was married and living with her in-laws, thus creating additional financial pressure on him. In this context, defendant No. 1 proposed to sell the disputed land to the plaintiff.

2. The plaintiff claims that since the year 2000, she has been in continuous possession of the suit property—Survey No. 14/2 (New No. 344) situated at Ahwa, Dang. The property is registered in the name of defendant No. 1. On 14/12/2011, defendant No. 1 visited the plaintiff at

Ahwa, in the presence of two witnesses—Sureshbhai Shankarbhai Bhoje and Mohanbhai Ukhadyabhai Gavit—and consented to sell the land for ₹75,000. The plaintiff states that she paid the agreed amount of ₹75,000 to defendant No. 1, and for this, defendant No. 1 issued a receipt, marked as Exhibit 3/5.

3. In support of her claim, the plaintiff has produced a consent letter, marked as Exhibit 3/04, which purportedly confirms the sale of the property. According to this letter, defendant No. 1 acknowledged receiving the consideration and agreed to execute the sale deed in favor of the plaintiff at a later date.

4. The plaintiff asserts that she has made substantial investments in the property since taking possession. She claims to have spent ₹80,000 on leveling the land and another ₹50,000 on the construction of a house for the purpose of farming and cultivating the land. Additionally, she fenced the property and has been engaged in agricultural activities on it ever since.

5. The plaintiff further submits that defendants No. 2 to 5, who are legal heirs of defendant No. 1, maliciously had their names entered into the revenue records on 13/07/2015, during the lifetime of defendant No. 1. The plaintiff alleges that this act was carried out with an intention to unlawfully deprive her of the property and usurp the land, even though the defendants were fully aware of the agreement and consent provided by defendant No. 1.

6. The plaintiff states that defendants No. 2 to 5 have attempted to interfere with her possession by engaging in quarrels and disputes with her. On multiple occasions, they tried to forcibly enter the property and disrupt her cultivation activities. As a result, the plaintiff lodged a

formal complaint with the Collector of Ahwa against the defendants. In support of this, she produced a letter from the Chitnis office, marked as Exhibit 3/11.

7. Given the ongoing threats and interference, the plaintiff has approached this court, seeking an interim injunction to prevent the defendants from disturbing her possession and from creating any third-party rights over the disputed land until the final disposal of the suit.

3. Defendants' Contentions:

In response to the plaintiff's application, the defendants have raised the following objections:

1. The defendants claim that the disputed property is ancestral land, and as such, defendant No. 1 cannot unilaterally sell the property without the consent of all legal heirs (defendants No. 2 to 5). The defendants argue that the alleged agreement and consent given by defendant No. 1 is invalid, as it was done without their approval.

2. The defendants also argue that the disputed land is classified as "restricted land" under Section 73AA of the Gujarat Land Revenue Code. This section prohibits the sale or transfer of such land without prior permission from the competent authorities. They contend that the sale agreement is void ab initio, as no such permission was sought or obtained.

3. The defendants categorically deny that the plaintiff has ever been in possession of the property. They claim that the land has remained in their possession, and that the consent letter and receipt produced by the plaintiff are fabricated documents. They assert that defendant No. 1

never executed any such documents, and therefore, the plaintiff's claim should be dismissed.

4.The defendants contend that the civil court lacks jurisdiction to entertain the suit, as the subject matter involves restricted land under the Gujarat Land Revenue Code. They argue that only the revenue authorities have jurisdiction over such matters, and therefore, the suit should be dismissed on this ground alone.

4. Issues for Consideration:

Upon considering the arguments and documents presented by both parties, the following issues arise for consideration in deciding whether to grant the interim injunction:

- 1.Whether the plaintiff has established a **prima facie** case.?
- 2.Whether the balance of convenience lies in favor of the plaintiff.?
- 3.Whether the plaintiff will suffer irreparable injury if the injunction is not granted.?
- 4.Whether the civil court has jurisdiction over the suit, given the provisions of Section 73AA of the Gujarat Land Revenue Code.?

5. Court's Findings:

After considering the submissions, documents, and the law, the court makes the following findings:

1.Prima Facie Case:

The plaintiff has presented documentary evidence in the form of a consent letter (Exhibit 3/04) and a receipt for ₹75,000 (Exhibit 3/5),

which appear to support her claim that an agreement for the sale of the property was made with defendant No. 1. The fact that the plaintiff has been in possession of the land since 2000, coupled with her allegations of improvements made to the property, further strengthens her claim. At this stage, the court finds that the plaintiff has established a **prima facie** case in her favor, sufficient to warrant further examination during trial.

2. Balance of Convenience:

The plaintiff has been in possession of the disputed land for a considerable period and has made substantial investments in improving the property. Disrupting this status quo by allowing the defendants to interfere with the property would cause irreparable harm to the plaintiff. On the other hand, if the defendants' rights are upheld at the conclusion of the trial, they can be compensated monetarily. Therefore, the balance of convenience lies in favor of granting the interim relief.

3. Irreparable Harm:

The court finds that the plaintiff stands to suffer irreparable harm if the injunction is not granted. Loss of possession and potential alienation of the property could lead to damage that cannot be adequately compensated in terms of money. This justifies the grant of an interim injunction to maintain the status quo.

4. Jurisdiction and Section 73AA of the Gujarat Land Revenue Code:

The defendants' contention that the land is restricted under Section 73AA of the Gujarat Land Revenue Code raises serious legal questions that require detailed examination at trial. The court is not inclined to decide this issue at the interlocutory stage, as it involves a thorough interpretation of the facts and law. At present, the court is satisfied that

the civil court has jurisdiction to entertain the suit, subject to the final outcome on the merits.

6. Conclusion:

In view of the above findings, the court is satisfied that the plaintiff has made out a **prima facie** case for the grant of interim relief. The balance of convenience lies in favor of the plaintiff, and there is a clear risk of irreparable harm if the injunction is not granted.

Accordingly, the application under Order 39, Rule 1 & 2 of the CPC is **allowed**. The defendants are hereby restrained from:

1. Interfering with the plaintiff's possession of the disputed land (Survey No. 14/2, New Number 344) and
2. Creating any third-party rights over the said property, until the final disposal of the suit.

No order as to cost

Pronounced in open court on 11th October 2024.

Date: 11/10/2024

Place : Ahwa, Dang

(S.A.Memon)

Principal Civil Judge

Judge Code No. GJ01567