

IN THE COURT OF PRINCIPLE CIVIL JUDGE, KHERGAM

RCS NO. 14 / 2025

In matter of :

Parbhubhai Koyabhai Patel and ors

...Plaintiff

V/S

Chandrakantbhai Mohanbhai Patel

... Defendant/s

ORDER BELOW EX—05

Appearance:

Ld Advocate for Plaintiffs on Record: Mr. S.C. Patel

Ld. Advocate for Defendants: Mr. V. R. Patel

1. Read the application ex-05. Perused the records of the present case. Perused written statement ex- 13 of defendant. Heard the learned advocates for both sides. The said application is for temporary injunction under section 94 (c) r/w order 39 rule 1 and 2 of the code of civil procedure. Both the learned advocate for the parties have **agreed and consented for status quo.**

Facts of the case:

2. The case of the Plaintiffs is that the Plaintiffs reside with their family at the address stated in the cause title of the suit and they are agriculturists and lawful landholders. The Defendants are not related to the Plaintiffs in any manner whatsoever, and they also reside at the address mentioned in the cause title of the suit. The suit property is agricultural land situated at Village Bhairavi, Taluka Khergam, District Navsari. The land bears Khata No. 757, Old Block No. 388, and New Block No. 455, admeasuring 1 Hectare 68 Are and 66 Square Meters, having assessment value 6.34 and is agricultural in nature. The land includes all appurtenant rights, interests, trees, standing crops, and benefits attached thereto. The boundaries of Block No. 455 are as follows: on the East, land of Jerambhai Somalabhai Patel; on the West, land of Bharatbhai Miththalbhai Patel; on the North, a drain and Government pitching; and on the South, land of Ganpatbhai Ramabhai Patel. The old Block No. 388 originally stood in the names of the deceased Govind Vallabh, deceased Koya Daji, and the heirs of Govind Vallabh, and thereafter came to be recorded jointly in the names of the Plaintiffs. The Plaintiffs are the lawful owners of the suit property and are in peaceful, continuous, and actual possession and enjoyment thereof. There exists one well and one bore-well on the land, and mango graft trees yielding produce are standing on the suit land. The Defendants are villagers owning adjoining lands and have started interfering with the Plaintiffs' land by encroaching upon the boundary and harassing the Plaintiffs. When the Plaintiffs objected, the Defendants attempted to forcibly trespass and encroach upon the suit property and are repeatedly attempting to enter the Plaintiffs'

land on a daily basis. In order to prevent damage to the Plaintiffs' property and to protect their lawful rights, the Plaintiffs have been compelled to file the present suit seeking declaration and permanent injunction. The Plaintiffs' lawful hereditary rights and interests in the suit property are under serious threat. The suit land is joint ancestral property situated at Village Bhairavi, and the revenue records do not reflect the names of the Defendants in respect of the suit property. The Defendants have no right, title, or interest whatsoever in the suit land; however, instigated by certain persons, they are attempting to unlawfully enter upon the Plaintiffs' land and have threatened to take the law into their own hands, which will cause irreparable loss and injury to the Plaintiffs that cannot be compensated in any manner later. The Defendants have continued their illegal acts of encroachment, and on 18-05-2025 they unlawfully entered the suit property, obstructed the Plaintiffs, and created disturbances. Accordingly, the cause of action has arisen on the said date and continues from day to day, and therefore the suit is within limitation. The suit property is situated at Village Bhairavi, Taluka Khergam, District Navsari, and hence this Hon'ble Court has jurisdiction to entertain, try, and decide the present suit. The suit is valued at ₹1,000/- for the relief of declaration, on which court fee of ₹100/- is paid, and ₹2,000/- for the relief of permanent injunction, on which court fee of ₹200/- is paid, making a total court fee of ₹300/-. The valuation for the purpose of advocate's fees and jurisdiction is the same. The Plaintiffs have produced documentary evidence separately in support of the present suit, the names and addresses of the Plaintiffs and Defendants stated in the cause title

are true and correct, and the Plaintiffs reserve their right to amend or add to the pleadings as and when necessary. The Plaintiffs therefore pray that this Hon'ble Court be pleased to declare the Plaintiffs as the lawful owners of the suit property, declare that the Defendants have no right, title, or interest whatsoever in the suit property, permanently restrain the Defendants, their agents, servants, or any persons claiming through them from unlawfully entering upon the suit land, obstructing the Plaintiffs' agricultural activities, or committing any illegal act of encroachment, and grant such other and further reliefs as this Hon'ble Court may deem fit and proper in the interest of justice.

3. The Defendants state that the suit property is agricultural land situated in District Navsari, Sub-District Gandevi (earlier mentioned as Megam Taluka), Village Bhairavi, bearing Revenue Account No. 191, Old Block No. 388 and New Block/Survey No. 455, admeasuring 3 Acres 1 Guntha (1 Hectare 68 Are 99 Sq. Meters) with assessment value of Rs. 6.55. Out of the said land, the portion falling to the share of Koyabhai Dajibhai Patel, along with trees, hedges, and all attached rights and interests, was sold on Tuesday, 19-01-1993 (Posh Vad Baras) at Village Bhairavi by the lawful owner Koyabhai Dajibhai Patel to Mohanbhai Koyabhai Patel for a total consideration of Rs. 70,251/- (Rupees Seventy Thousand Two Hundred Fifty-One only), out of which Rs. 5,001/- (Rupees Five Thousand One only) was paid on the same day as earnest money. At the time of sale, certain terms and conditions were agreed upon. The land was earlier known as Old Survey No. 493 and an agreement to sell was executed accordingly, and later, based on the revised

conditions, a fresh agreement dated 07-03-1993 was executed with respect to New Block/Survey No. 388. During the course of the transaction, on 07-03-1993, an amount of Rs. 50,000/- (Rupees Fifty Thousand only) was paid by the purchaser Mohanbhai Koyabhai Patel through Ramanbhai Koyabhai Patel on behalf of Koyabhai Dajibhai Patel, and on the same day possession of the land was handed over to the purchaser. Thereafter, on 24-01-1994, a written agreement to sell was executed on a stamp paper of Rs. 20/-, and the entire sale consideration of Rs. 70,251/- was paid by the purchaser to the seller in installments, namely Rs. 5,001/- on 19-01-1993 as earnest money, Rs. 50,000/- on 07-03-1993, Rs. 15,000/- on 02-04-1993, and Rs. 10,000/- on 24-01-1994, thus fully satisfying the sale consideration. The seller assured that after obtaining necessary permission under Section 73 of the relevant land laws, a registered sale deed would be executed, and upon receipt of the full consideration, a receipt dated 24-01-1994 was also issued by Koyabhai Dajibhai Patel. Further, out of the remaining portion of Block No. 388, land admeasuring 50 Gunthas in possession of co-owner Hariyabhai Maganbhai Patel was agreed to be sold for a consideration of Rs. 1,31,000/- (Rupees One Lakh Thirty-One Thousand only) by way of an agreement dated 20-12-1998 in favour of Mohanbhai Koyabhai Patel and Ramabhai Trambakbhai Patel, wherein Rs. 1,001/- was paid as earnest money on the same day, Rs. 1,00,000/- was agreed to be paid on 15-01-1999, and the balance amount of Rs. 30,000/- was agreed to be paid at the time of execution of the registered sale deed. Accordingly, on 15-01-1999, a possession-coupled sale agreement was executed on stamp paper of

Rs. 20/- between the sellers and purchasers, and possession of the land was handed over. On the basis of the agreements dated 24-01-1994 and 15-01-1999, the land bearing Revenue Account No. 191, Old Block No. 388, New Block No. 455, admeasuring 1 Hectare 68 Are 99 Sq. Meters, was lawfully sold and possession was delivered to the purchasers, who have since been in actual, peaceful, and continuous possession and enjoyment of the suit land at Village Bhairavi. Further, one portion of Block No. 388 admeasuring 1 Acre 30 Gunthas situated on the eastern side was earlier sold on 15-06-1992 (Jeth Sud 15) for a consideration of Rs. 14,549/- and possession was handed over, upon which the purchaser constructed a well and obtained an electricity connection, thereby establishing lawful possession and enjoyment.

Arguments:

4. The learned advocate for the defendant and plaintiff argues that that his arguments are as per the pleadings and records. Further they have consented for status quo.

Relevant provisions of law and principles:

S.94 :- Supplemental proceedings.

In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

Order 39 Rule 1:- Cases in which temporary injunction may be granted.— Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation

to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

5. In case of Seema Arshad Zaheer Vs Municipal Corporation of Greater Mumbai 2006 SCC 282 , Hon'ble Supreme Court considered the requirements of discretion for granting temporary injunction and:

The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff :

(i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction;

(ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and

(iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted.

In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

6. It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for

injunction, which is an equitable remedy, must be governed by the principles of "uberrima fides".

The aforesaid requirement of coming to court with clean hands has been repeatedly reiterated in a large number of cases. Some of which may be noted, they are Hari Narain v Badri Das AIR 1963 SC 1558; Welcome Hotel v State of A.P. (1983)4 SCC 575: 1983 SCC (Cri) 872; G. Narayanaswamy Reddy v Govt. of Karnataka (1991)3 SCC 261: JT (1991)3 SCC 12; S.P. Chengalavaraya Naidu v Jagannath (1994)1 SCC 1: JT (1993)6 SC 331; A.V. Papayya Sastry v Govt. of A.P. (2007)4 SCC 221: JT (2007)4 SC 186; Prestige Lights Ltd. v SBI (2007)8 SCC 449: JT (2007)10 SC 218; Sunil Poddar v Union Bank of India (2008)2 SCC 326: (2008)1 SCC (Civ) 558: JT (2008)1 SC 308; K.D. Sharma v SAIL (2008)12 SCC 481: JT (2008)8 SC 57; G. Jayashree v Bhagwandas S. Patel (2009)3 SCC 141: JT (2009)2 SC 71 and Dalip Singh v State of U.P. (2010)2 SCC 114: (2010)1 SCC (Civ) 324:

7. In case of Rame Gowda (D) by L.Rs v. M. Varadappa Naidu (D) by L.Rs. and another AIR 2004 SC 4609 held as under:

In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a filmsy character, or recurring, intermittent, stray or casual in nature or has just been committed, while the rightful owner did not

have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

The Court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

(i)that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii)that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would however, be a matter to be decided on the facts and circumstances of each case.

(iii)the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv)that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.

8. In case of Metro Marins V. Bonus Watch AIR 2005 SC 144, The hon'ble Supreme Court observed

In the instant case the issue whether the plaintiff is entitled for possession was yet to be decided by the trial Court hence granting of any interim order directing handing over of possession to plaintiff would only mean decreeing the suit even before trial.

Further Hon'ble Gujarat High Court in case of Jaganben A.Patel Versus State Of Gujarat 1999 (0) AIJEL - HC 205296 :1999-GLR-3-2318: 1999-GLH-1-846, observed :

The law is almost settled that in substance giving the principle relief by way of interim relief is impermissible. See State of U. P. V/s. Vishveshwar, 1995 Supp. (3) SCC 590. Interim order should not amount to overreaching the main relief which ultimately the court may or not grant.

Reasons:

9. On a careful consideration of the pleadings, documents on record, and the submissions advanced by the learned advocates for both sides, it appears that the dispute involves serious questions relating to right, title, interest, and possession of the suit property. The rival claims raised by the parties cannot be conclusively decided without a full-fledged trial. At this stage, the material placed before the Court is sufficient to show that a bona fide and arguable case exists, warranting protection of the subject matter of the suit. Thus, a prima facie case is made out for grant of interim protection.

10. If interim protection is not granted and either party is permitted to change the existing position of the suit property, including by creating third-party rights, the affected party would suffer injury which cannot be adequately compensated in terms of money. Such acts may permanently alter the character of the property and render the final relief, if granted, ineffective. The likelihood of irreparable loss and injury is therefore evident.
11. The balance of convenience also lies in favour of maintaining the existing state of affairs. Preserving the present position will not cause undue hardship to either party, whereas any disturbance to the status quo may give rise to further complications and unnecessary litigation. Maintaining status quo will ensure that the rights of both parties remain safeguarded until the suit is finally decided.
12. It is also placed on record that **the learned advocates appearing for both sides have, after due instructions, consented to the grant of a status quo order in order to avoid further disputes and to protect the subject matter of the suit.** In view of the prima facie case, the likelihood of irreparable injury, and the balance of convenience being in favour of preservation of the property, it is just and proper to direct that status quo as on today with respect to possession, nature, and title of the suit property shall be maintained. It is further directed that neither party shall transfer, alienate, encumber, or create any third-party interest in the suit property without prior permission of this Hon'ble Court, pending final disposal of the suit.
13. Considering the above mentioned fact and principles of law, in the interest of justice, following orders are made:

Order

1. The application ex- 05 is partly allowed.
2. The Both parties shall maintain status quo with respect to the nature and character of the suit property.
3. Both the plaintiff and the defendants are hereby restrained from selling, transferring, alienating, creating third-party rights, or executing any agreement to sell in respect of the suit property till final disposal of this suit.
4. This order is passed in view of the consent of both learned advocates for the parties and for the limited protection of the subject matter of the suit.
5. The trial of the suit shall proceed expeditiously and neither party shall seek unnecessary adjournments.
6. No order as to cost.

The order is read and pronounced today in open court.

Principle Civil Judge & J.M.F.C.

Dharanth. R. Patel
JO CODE GJ01753
Date:- 26.02.2025
Place: Khergam, Navsari