



IN THE COURT OF PRINCIPLE CIVIL JUDGE, KHERGAM

RCS NO. 15 / 2025

In matter of :

Sharmilaben Widow of Hemantbhai Rameshbhai and ors

...Plaintiff

V/S

Kanubhai Jairambhai Ganvit and ors

... Defendant/s

ORDER BELOW EX- 14

Appearance:

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

Ld. Advocate for Defendants on Record: Mr. N. B. Parmar & M. G. Shiekh

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1. Read the application ex-14. Perused the records of the present case. Perused written statement by ex- 12. 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.

Facts of the case:



2. The case of the plaintiffs is that the plaintiffs reside at the address mentioned in the cause title along with their family members and earn their livelihood by carrying out agricultural activities. The defendants No.1 to 3 and the plaintiffs are related to each other through their common ancestor late Laxmiben, wife of Ramatubhai Kolvabhai Gamit. From the wedlock of Ramatubhai Kolvabhai and Laxmiben two sons were born namely Jerambhai Ramatubhai and Fakirbhai Ramatubhai and therefore Jerambhai Ramatubhai and Fakirbhai Ramatubhai were real brothers related by blood. The plaintiffs are the lawful lineal heirs of Fakirbhai Ramatubhai whereas the defendants are the lawful lineal heirs of Jerambhai Ramatubhai. All the parties to the suit belong to the Scheduled Tribe community known as Kukna Adivasi. It is further the case of the plaintiffs that their ancestors Laxmiben, wife of Ramatubhai Kolvabhai Gamit and Ramatubhai Kolvabhai were cultivating and enjoying the agricultural lands situated at Village Bahej, Taluka Khergam, District Navsari bearing Old Khata No.77 and New Khata No.177 along with all rights relating to trees and other appurtenances. The said land was being cultivated by the family and the income derived from the same was used for maintenance of the family. It is stated that in the year 1959 when the law relating to abolition of Inam lands came into force, as per the rules prevailing at that time only the name of one person could be entered in the revenue record and therefore the name of the eldest son of the family namely Jerambhai Ramatubhai was entered in the revenue record in the year 1959 by Entry No.1 in Village Form No.6 of Bahej village which entry was thereafter duly certified. However,



according to the plaintiffs although the name of Jerambhai Ramatubhai was entered in the revenue record, his real brother Fakirbhai Ramatubhai also had an equal right and share in the said property and Fakirbhai Ramatubhai was also cultivating the said land and thereafter the plaintiffs, being the heirs of Fakirbhai Ramatubhai, have continued cultivating the same till today and therefore the plaintiffs have a lawful undivided share in the suit property. It is further the case of the plaintiffs that the common ancestor Laxmiben died about thirty years ago and thereafter the family members continued to cultivate the said lands. The lands situated at Village Bahej, Taluka Khergam bearing New Khata No.177 and various block numbers along with the areas mentioned in the plaint constitute the suit property and the same are ancestral and undivided family properties in which all the parties to the suit are co-sharers. The plaintiffs further state that after the death of the common ancestor Laxmiben, the legal heirs had orally divided their respective shares for convenience and each of the heirs constructed residential houses on their respective portions and have been residing there for many years. The plaintiffs state that they are in actual possession and cultivation of the land falling in their share and have been enjoying the same for several years and therefore they have an undivided lawful share in the suit property. The plaintiffs further state that as per the custom prevailing in the Kukna community the name of the eldest son late Jerambhai Ramatubhai was entered in the revenue record as head of the family after the death of Laxmiben and after the death of Jerambhai Ramatubhai his legal heirs got their names entered in the revenue record. However



the name of the plaintiffs' predecessor Fakirbhai Ramatubhai who was the younger brother of Jerambhai Ramatubhai was never entered in the revenue record. It is further the case of the plaintiffs that when they recently started taking steps for partition of the suit property they came to know that their names were not entered in the revenue record. The plaintiffs state that they requested the defendants several times to enter their names in the revenue record but the defendants kept postponing the matter by assuring that their names would be entered later. However about one month prior to filing of the suit when the plaintiffs firmly demanded mutation of their names and partition of the suit property the defendants clearly refused to do so and further threatened that taking advantage of the absence of the plaintiffs' names in the revenue record they would sell the suit property to third parties and would dispossess the plaintiffs from the land. According to the plaintiffs the defendants are attempting to deprive them of their lawful share and long standing possession and are making efforts to alienate the property to outsiders and therefore the plaintiffs were left with no alternative but to file the present suit seeking partition of the suit property and recognition of their hereditary rights. The cause of action for the suit has arisen as the defendants and their predecessor late Jerambhai Ramatubhai got their names entered in the revenue record excluding the names of the plaintiffs and their predecessors and thereby deprived the plaintiffs of their lawful rights and further when on 25.06.2024 the plaintiffs personally requested the defendants to carry out lawful partition of the ancestral property the defendants refused and threatened to grab the entire property, dispossess the



plaintiffs from their share and sell the property to third parties and since it has become necessary to have the plaintiffs' names entered in the revenue records and since the joint holding cannot be continued in such circumstances the present suit has been filed and the cause of action is continuing. The plaintiffs have therefore prayed that this Hon'ble Court may be pleased to declare that the plaintiffs are the lawful lineal heirs of Laxmiben wife of Ramatubhai Kolvabhai Gamit, to declare that the suit property described in the plaint is ancestral and undivided property and that the plaintiffs are entitled to one half share therein and to order partition and separate possession of the plaintiffs' share by metes and bounds, to direct that the names of the plaintiffs be entered in the revenue record as lawful co-sharers and that the defendants cooperate in such mutation proceedings, to grant permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the land falling in the plaintiffs' share and to grant such other and further reliefs as may be deemed just and proper in the interest of justice.

3. The case of the defendants is that the property situated at Village Bahej, Taluka Khergam bearing New Khata No.177 (Old Khata No.77) originally belonged exclusively to the father of the defendants, namely Jerambhai Ramatubhai. The defendants state that in the year 1953, under the provisions relating to abolition of Jagirdari in the areas merged with the Bombay State, their father Jerambhai Ramatubhai was declared as the holder and occupant of the said lands. Accordingly, in Village Form No.6 of Bahej village, Entry No.1 came to be recorded in his name in respect of Survey



Nos.355/1, 357/2, 401, 433/1 and 437. Thereafter, upon consolidation, the said survey numbers were assigned Block Nos.464, 456, 504, 537 and 557, which are the old block numbers. According to the defendants, all these lands exclusively belonged to their father Jerambhai Ramatubhai and the plaintiffs have no right, title, interest or share whatsoever in the said property. The defendants further contend that the younger brother of Jerambhai Ramatubhai, namely Fakirbhai Ramatubhai, did not have any land for construction of a house. Therefore, out of goodwill and brotherly affection, the elder brother Jerambhai Ramatubhai had permitted Fakirbhai Ramatubhai to occupy a small piece of land only for the purpose of constructing a residential house. On that piece of land Fakirbhai Ramatubhai and his family constructed a house and resided there. Except for granting such small space for residence, no other right or property was given to Fakirbhai Ramatubhai. Therefore, the plaintiffs cannot claim to be co-sharers in the suit property. According to the defendants, the plaintiffs have filed the present suit with mala fide intention and in collusion among themselves with the object of grabbing the property belonging to the defendants and hence the suit deserves to be dismissed. The defendants further state that the facts stated by the plaintiffs in paragraph 4 of the plaint are totally false and fabricated with dishonest intention. According to the defendants, the property in question was never allotted to Laxmiben, wife of Ramatubhai Kolghabhai Gamit, and therefore the question of any oral partition of the property among the heirs does not arise at all. The defendants deny that the plaintiffs have any actual possession or enjoyment of



the suit property or that any share of the plaintiffs has ever been separated. The defendants further state that even if the plaintiffs occasionally cut grass for cattle from the land, such act cannot be treated as possession or cultivation of the land. Therefore the claim of the plaintiffs regarding possession and share in the suit property is wholly false and the suit deserves to be rejected. The defendants further state that the allegations made in paragraph 5 of the plaint are false and baseless. According to the defendants, the suit property was allotted exclusively to their ancestors and therefore, as heirs of their ancestor who was declared the landholder, the defendants alone have inherited the property. The plaintiffs have no right or share whatsoever in the said property and therefore the suit deserves to be dismissed. The defendants further deny the allegations made in paragraph 6 of the plaint and state that the same are false and not admitted. According to the defendants, the plaintiffs have no concern with the suit property but being clever and dishonest they have filed the present false suit only to create pressure, to trespass into the defendants' property and to grab the same. Hence the suit deserves to be dismissed. The defendants further state that the allegations made in paragraph 7 of the plaint regarding the cause of action are also false and fabricated. According to the defendants, no such incident as alleged by the plaintiffs took place and the statement that the plaintiffs met the defendants on 25.06.2024 is false. The allegations regarding threats are also denied. According to the defendants, no cause of action has arisen for filing the suit and therefore the plaint deserves to be rejected. The defendants further state that they have no knowledge regarding the contents of



paragraph 8 of the plaint and therefore the same are not admitted. The defendants further contend that the burden of proving the contents of paragraphs 9 and 10 of the plaint lies upon the plaintiffs and unless the same are proved by the plaintiffs the defendants cannot be called upon to admit them. The plaintiffs have created false facts and a false cause of action only with the intention to harass the defendants and to grab their land. Therefore the defendants pray that the suit filed by the plaintiffs be dismissed with costs and appropriate costs be awarded against the plaintiffs for filing such a false and vexatious suit.

Arguments:

4. Both sides have argued that their arguments are as per the pleadings and documents attached with that.

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. In the present case, the plaintiffs have filed the suit seeking declaration, partition and injunction in respect of the suit property on the ground that the property is ancestral and that they have a one-half share therein as heirs of Fakirbhai Ramatubhai. The plaintiffs have further contended that although the name of Jerambhai Ramatubhai was entered in the revenue record in the year 1959, both brothers were cultivating the land and therefore the plaintiffs, as heirs of Fakirbhai Ramatubhai, are entitled to their share. Per contra, the defendants have categorically denied the said contention and have asserted that the suit property was exclusively granted to their predecessor Jerambhai Ramatubhai under the provisions relating to abolition of Jagirdari and that the revenue entries were made in his name as the holder and occupant of the land. According to the defendants, Fakirbhai Ramatubhai was merely permitted to occupy a small portion of land for construction



of a house out of goodwill and no share in the agricultural land was ever given to him. The defendants have therefore denied that the plaintiffs are co-sharers or that they have any possession over the suit property.

10. The Court is required to examine whether the plaintiffs have established the three well-settled requirements for grant of temporary injunction, namely (i) existence of a prima facie case, (ii) balance of convenience, and (iii) likelihood of irreparable loss or injury.
11. From the material placed on record, it appears that the revenue entries relating to the suit property stand in the name of the defendants' predecessor Jerambhai Ramatubhai since the year 1959 and thereafter in the names of the defendants as his heirs. The plaintiffs have not produced any documentary material at this stage to show that their predecessor Fakirbhai Ramatubhai was recorded as a co-holder or that the suit property stood jointly recorded in the names of both brothers. The principal contention of the plaintiffs is based on an alleged ancestral character of the property and an oral arrangement within the family. Such disputed questions regarding title, nature of the property and alleged oral partition require detailed evidence and cannot be conclusively determined at the interlocutory stage.
12. Furthermore, the plaintiffs have themselves pleaded that the names of their predecessors were never entered in the revenue record. In such circumstances, the claim of long standing legal possession and co-ownership is seriously disputed and cannot be accepted merely on the basis of the assertions made in the plaint.



The defendants, on the other hand, rely upon the revenue record showing the name of their predecessor as the landholder. In absence of clear documentary material showing the plaintiffs' legal share in the property, the Court is of the view that the plaintiffs have not been able to establish a strong prima facie case in their favour at this stage.

13. So far as the balance of convenience is concerned, the plaintiffs are primarily seeking partition and declaration of their share in the property. If ultimately the plaintiffs succeed in establishing their rights in the suit, their share can always be worked out in the final decree for partition. Therefore, refusal of temporary injunction at this stage would not cause such prejudice which cannot be compensated in the final adjudication of the suit.
14. Similarly, the element of irreparable loss is also not established. The alleged rights of the plaintiffs are yet to be proved and any injury claimed by them can be adequately addressed if they succeed in the suit. On the contrary, granting injunction at this stage would amount to restraining the recorded holders of the property on the basis of disputed and unproven claims.
15. Considering the circumstances, the Court is of the opinion that the plaintiffs have failed to establish a prima facie case, balance of convenience and irreparable injury in their favour.
16. Considering the above mentioned fact and principles of law, in the interest of justice, following orders are made:

Order

1. The application is hereby rejected.



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2. 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:- 09.03.2026
Place: Khergam, Navsari