

ORDER BELOW EX. 05 IN C.M.A. NO. 34 OF 2015.

1. The applicants have filed this application to revoke the order passed in C.M.A. No. 26/1993 dated 18/6/10 under provisions of Sec. 263 of the Indian Succession Act and with this application, they have preferred present application for ad-interim injunction under O.39, R. 1 & 2 of C.P.C. The brief facts of this application are as under.

The applicants states that Mr. Babulal Savji @ Chatrabhuj Savji was doing the business of "Pure Ghee" in Sutarwada, Porbandar had married to Kanchanben and during their wedlock, they have five children (1) Mr. Maheshkumar Chatrabhuj, (2) Mr. Subhashchandra Chatrabhuj, (3) Mr. Jagdishchandra Chatrabhuj, (4) Mr. Prafulchandra Chatrabhuj and (5) Shri Krishnaben Chatrabhuj and after the demise of Kanchanben, Mr. Chatrabhuj has remarried to Mrs. Hansaben, during his second marriage, they have no any issue. The applicants further state that the applicant No.1 has married to Mr. Prafulbhai Savjibhai Thakrar, the son of Mr. Chatrabhuj Savji as PER Hindu religion and during wedlock of her with Mr. Prafulbhai, the applicant No.2 born, thus, the deceased Mr. Chatrabhuj Savji was father in-law of applicant No.1 and the grand father of applicant No.2. The applicants further submit that a partnership firm on the name of Chatrabhuj Savji was running in Sutarwada Area and was holding immovable properties as mentioned in para 2(1) to 2(6) of the plaint-main application. The applicants further state that Mr. Chatrabhuj Savji, during his existence executed a Regd. Will on 18/2/88, in which he has held that after his death, the suit properties shall be distributed in equal share among his four sons and then Mr. Chatrabhuj died on 16/3/91. After his demise, his four sons have filed probate application bearing C.M.A. No.26/93 and during its pendency, Mr. Prafulbhai Chatrabhuj died on 27/2/03, then remaining three brothers have filed an application Ex. 62 on 14/12/07 to delete the name of Mr. Prafulbhai Chatrabhuj stating that they would produce the consent letters of the heirs of Mr. Prafulbhai Chatrabhuj, in the result, the Hon'ble Court has allowed said application and ordered to delete the name of Mr. Prafulbhai Chatrabhuj and without such consent letters, the Hon'ble Court has passed the order to issue probate of Will dated 18/6/10 in favour of three sons i.e. applicants No. 1 to 3 in C.M.A. No. 26/93, the probate certificate is also issued on 30/12/10.

2. The applicants further states that they were residing at Jamnagar and inquiring about C.M.A. No.26/93 on 3/11/14, they came to know that the opponent No. 4 of this application has purchased the big and valuable house having City Survey Ward No.2, Survey No. 2346 with consideration of Rs. 14/- lac. as well as the opponent No. 5 has purchased the house having City Survey Ward No.3, Survey No.3481 on 21/10/14. The applicants further state that they have published a public notice through their advocate in daily news paper on 21/11/2011 that there are their share being the heirs of late Mr. Praful Savji in above mentioned all the properties, so, nobody has to made any transaction in respect of said properties. The applicants further state that the opponents Nos.1 to 3 have obtained the probate under Sec. 263 of the Indian Succession Act by misleading facts and misrepresentation from the Hon'ble Court, so, the said transaction or alienation of the properties are not binding to them and in the result, they have filed R.C.S. No.33/15 to cancel the probate, but it was not maintainable under Sec. 263 of the Act, the said suit was rejected with direction to file application to revoke the probate, hence, the applicants are compelled to file this application under O.39, R.1 & 2 and pray that the opponents Nos.1 to 3 have transferred the above properties by Regd. Sale Deeds in favour of opponents No.4 & 5 on basis of false probate certificate passed in C.M.A. No. 26/93, are not binding to them. The applicants further pray that the opponents Nos.1 to 3 are required to restrain the dispositions of remaining properties as mentioned above and the opponents Nos. 4 to 5 are also required not to transfer their purchased properties to avoid future multiplicity of proceedings, thus, in view of above facts, the applicants have prima facie case and balance of convenience is in their favour and if this application is not allowed, the valuable ancestral right on the suit properties of them will be frustrated and on the other hand, the opponents may not suffer any irreparable hardship than to the applicants.

3. After serving the summons of this application, the opponents Nos.1 to 3 have filed their objection at Ex.24, wherein they contend that present application of applicant is not legal and not maintainable at law. They admit the facts of C.M.A. No.26/93, execution of Will dated 18/2/88, the demise of Mr. Prafulbhai on 27/2/03 and contend that the applicants were in full

knowledge about the application Ex.62 preferred in C.M.A. No.26/93 to delete the name of Mr. Prafulbhai and consuming the time about 7.5 years, the Hon'ble Court, on 18/6/2010, legally issued the probate certificate in their favour. The opponents contend that Mr. Prafulchandra Chatrabhuj was also the party to C.M.A. No. 26/93 who died on 27/2/03 and the applicants were fully aware about the facts of said C.M.A. and while application Ex.62 to delete the name of late Mr. Prafulchandra Chatrabhuj was preferred, the applicants were residing at Jamnagar, the applicant No.1, on 16/5/2010 remarried to Mr. Rajeshbhai Raichura at Vadodara, Mr. Rajeshbhai has also adopted the applicant No.2 as his son and took with him. The opponents further contend that the applicants have suppressed the above material facts before the Hon'ble Court. The opponents further contend that after a lapse of five years i.e. from 18/6/10 on which the Hon'ble Court has issued probate certificate in their favour, the applicants have filed present application, therefore, the present application is barred by limitation. The opponents No.1 to 3 further contend that the applicant No.1 remarried and is not the legal widow wife of Mr. Prafulchandra Chatrabhuj, hence, is not entitled to get any relief. The opponents Nos.1 to 3 further contend that under Sec. 264 of the Indian Succession Act, there is provisions of appeal, which has not been preferred by the applicants, hence, no such relief can be granted. The opponents further contend that present application does not consist the ingredients of O.39, R.1 & 2 and under O.7, R.13 of C.P.C., present application is not maintainable, prays to dismiss this application. The opponents further contend that the opponents Nos. 4 & 5 have already deleted below application Ex.16, further contend that the Hon'ble Court has passed the probate order on 18/6/2010 in C.M.A. No. 26/93 and on basis of that order, the opponents Nos.1 to 3 have become legal owners of the suit properties, consequently, the ad-interim injunction cannot be issued against them and ultimately, they pray to dismiss this application with cost.

4. The following points arise to decide present application.

POINTS

- (1) Whether applicants prove their prima facie case ?
- (2) Whether applicants prove that the balance of convergence is in their

favour ?

- (3) Whether applicants prove that if this application is rejected, they will suffer irreparable damage which cannot be compensated in terms of money ?
- (4) What order ?
5. My finding to the above points are as under.
- (1) In the affirmative.
- (2) In the affirmative.
- (3) In the affirmative.
- (4) As per final order.

REASONS

6. To prove this application, the applicants have produced following documents.

No.	Particulars of documents.	Marks
1.	Xerox copy of Will.	4/1
2.	Xerox copy of death certificate of Babulal.	4/2
3.	Xerox copy of death certificate of Praflbhai.	4/3
4.	Xerox copy of application Ex.62 in C.M.A.No.26/93	4/4
5.	Xerox copy of judgement of C.M.A. No. 1993.	4/5
6.	Xerox copy of Regd. Sale Deed.	4/6

7. The opponents Nos.1 to 3 have produced following documents.

No.	Particulars of documents.	Marks
1.	Xerox copy of partnership deed.	40/1
2.	Xerox copy of partnership deed.	40/2

8. Mr. Sarfaraj D. Jokhia, learned advocate for the applicants has filed his written argument for ad-interim injunction application at Ex.30, wherein he argues according to this application and further argues that the ingredients of O.39, R.1 & 2 are applicable to the present application. He further argues that the late Mr. Babulal @ Chatrabhuj Savdi has executed a Will Ex.4/1 in respect of his properties and it is held by him that his four sons are having equal right in his properties, and accordingly, the applicant No.1's husband Mr. Prafulbhai has 1/4 share in the properties of late Mr. Babulal

and as per the provisions of the Hindu Succession Act, the applicant No.1 being the legal widow wife and applicant No.2 being the legal son of late Mr. Prafulbhai, they are entitled to get the 1/4 share of Mr. Prafulbhai from the disputed properties. Mr. Jokhia further argues that keeping the applicants in darkness, the opponents Nos.1 to 3 have obtained the probate certificate in respect of the Will and getting the probate, the opponents Nos.1 to 3 have disposed of some properties. Mr. Jokhia further argues that if the present application is not allowed, the opponents will transfer or alienate the other properties of late Mr. Babulal, the legal rights of the applicants may be frustrated and the opponents would not suffer any irreparable legal injury, therefore, the applicants have prima facie case and balance of convenience are in favour of the applicants and prays to allow this application.

Mr. S.D. Jokhia, L.A. for the applicants has relied upon a case of Vastabhai Madhubhai Machhi V/s. Tarachand Vastabhai Machhi reported in **1992(1) G.L.H. 60**.

9. Mr. D.B. Lakhani, L.A. for the opponents Nos. 1 to 3 has produced his written argument at Ex. 39 wherein he argues that present application is not maintainable under the provisions of delay, laches etc. He further argues that after demise of applicant No. 1's husband Mr Prafulbhai on 27/2/03, the applicants went to reside at Jamnagar and on 26/5/2010, the applicant No.1 has remarried to Mr. Rajeshbhai Raichura and by this way, henceforth, the applicant No.1 is not the widow wife of late Mr. Prafulchandra Thakrar, this fact is not disclosed by the applicant No.1 in this application. Mr. Lakhani further argues that the opponent Nos. 4 & 5 have preferred an application Ex.16 to delete them as parties and the applicants have preferred a Sp.C.A. No.5194/16 against the order passed below application Ex.16, thus, the opponents Nos.4 & 5 have been deleted as party to this application, so, present application is not maintainable against them. Mr. Lakhani has argued on the facts of C.M.A. No. 26/93 and considering the principles laid down in 2010(2) G.L.R. 1041 as well as AIR 1992 Allahabad 55, argues to dismiss this application. Mr. Lakhani further argues that when equitable relief is available, then the ad-interim injunction application is not maintainable under the provisions of Sec. 41(h) of the Specific Relief Act.

Mr. Lakhani further argues that M/s. Panchshil Solvent Industries of Jamnagar was in partnership of decd. Mr. Prafulchandra and after the demise of Mr. Prafulchandra, the applicant No. 1 was placed as partner in the said partnership firm, thus, the applicant No.1 was given the share of late Mr. Prafulchandra Thakrar. Mr. Lakhani further argues about C.M.A. No.26/93 and Sec. 264 of the Hindu Succession Act as well as on Article 137 of the Limitation Act as discussed and lastly he prays to dismiss this application with cost.

Mr. D.B. Lakhani, relied upon the following case laws.

- (1) Harshadkumar Kantilal Bhalodwala & Anr. V/s. Ishwarbhai Chandubhai Patel & Ors. reported in 2010(2) G.L.R. 1041.
- (2) Mohmmad Yasin & Anr. V/s. Mohammad Yasin Others reported in AIR 1992 Allahabad 55.
- (3) Navalram Laxmidas Devmurari V/s. Vijayaben Jayvantbhai Chavda reported in 1997(3) GCD 418 (Guj).
- (4) Jamnagar Rajkot Gramin Bank Officers Association & Anr. V/s. Jamangar Rajkot Gramin Bank through its Chairman & Anr. reported in 1997(3) GCD 418 (Guj).
- (5) Anupam Rekaadi Cabin Association V/s. Jamnagar Municipal Corporation reported in 1996(2) 423 (Guj)
- (6) Surat Electricity Co. Ltd. V/s. Rajeshwariben Jamietram reported in 1995(2) GCD 655 (Guj).

10. **Points Nos. 1 to 3** :-

As above points are inter connected to each other and just to avoid the repetition of the facts, the above points are discussed & decided together.

I have heard learned advocates of the parties. I have gone through the pleadings, documentary evidences and case laws produced & cited by the parties on record.

The main dispute raised by the applicants that the properties mentioned in this application are ancestral properties. The opponents Nos. No. 1 to 3 and the husband of applicant No.1, father of applicant No.2 Mr. Prafulchandra were the four sons of late Mr. Babulal @ Chadrabhuj Savji

who was holding the immovable properties as mentioned in para 2 (1) to 2(6), died on 17/3/91 vide Mark 4/2. It is the dispute on behalf of the applicants that the late Mr. Babulal @ Chatrabhuj Savji had executed a registered Will on 18/2/88 produced at Mark 4/1 in respect of his properties and by way of Will Mark 4/1, the testator has allotted his properties among his four sons in equal share. Mr. Prafulchandra is the son of late Mr. Babulal @ Chatrabhuj Savji, who as per Mark 4/3 died on 27/2/03, the applicant No.1 is the legal wife and applicant No.2 is the legal son of late Mr. Prafulchandra. It is allegation of the applicants that all four sons have, after demise of Mr. Babulal, filed C.M.A. No.26/93 vide Mark 4/5 and after demise of Mr. Prafulchandra, deleting the name of Mr. Prafulchandra, the opponents Nos. 1 to 3 have fraudulently obtained probate certificate from the Hon'ble Court on 18/6/2010. It is the dispute that the said probate certificate is obtained by the opponents Nos.1 to 3 keeping them in darkness and on basis of probate certificate, the opponents Nos.1 to 3 have disposed of some of the properties, the Regd. Sale Deed of the disposed of properties is at Mark 4/6. The applicants say that in those disposed of and remained properties, there were 1/4 share of late Mr. Prafulchandra, which have not been given to them, therefore, the applicants have filed this application to revoke the probate order and preferred present application Ex.5 for ad-interim injunction.

The main objections on behalf of the opponents Nos.1 to 3 are as that the applicant No.1 being the widow wife and applicant No.2 being the son and after the demise of Mr. Prafulchandra, the applicant No.1 remarried to Mr. Rajeshkumar Raichura, the applicant No.2 was also adopted by Mr. Rajeshkumar Raichura, so, the applicants are not entitled to get the relief of injunction. The opponents Nos.1 to 3 have also stated that M/s. Panchshil Solvent Industries was raised among (1) Mr. Prataprai Kalyanji Dattani of Porbandar, (2) Mr. Vithaldas Kalyanji Dattani & (3) Mr. Sachin Vithaldas Dattani of Khambhalia; the opponents Nos.1 to 3 and late Mr. Prafulchandra in partnership and after demise of Mr. Prafulchandra Thakrar, the name of applicant No.1 was inserted as parter in the said partnership firm in place of Mr. Prafulchandra executing partnership deed, the said both partnership deeds are produced at Mark 40/1 & 40/2.

Mark 40/1 is a xerox copy of the partnership deed executed on 1/5/1998 for the business in the name and style of "M/s. Panchshil Solvent Industries", in which late Mr. Praful Chatrabhuj Thakrar is shown at Sr. No.5.

Mark 40/2 is a xerox copy of partnership deed executed on 10/5/10, which shows that the name of applicant No.1 is inserted as partner in place of her late husband. But, the opponents fail to prove that till the day, the said partnership firm is running and in existence.

Looking to the prayer, the applicants have filed this main application to revoke the probate in issued on 18/6/10 in C.M.A. 26/93, and the applicants have prayed to issue ad-interim injunction against the opponents with regards to the properties as mentioned in para 2 of main application.

11. I have gone through the above documentary evidences, they do not disclose the fact that the applicants have got the 1/4 share of late Mr. Prafulchandra from the properties as mentioned in the main application. On the other hand, the opponents Nos.1 to 3 have not produced clear fact by documentary evidence that they have given the 1/4 share of Mr. Prafulchandra to the applicants. The opponents have stated in their written argument that the applicant No.1 has remarried to Mr. Rajeshkumar Raichura and Mr. Rajeshkumar has also adopted the applicant No.2 as his son. But, in this regard, they have not produced any memorandum of marriage i.e. remarriage and adoption deed to prove this contention. There is a main dispute among the parties is relating to the ancestral properties and in this regard, the opponents have themselves mentioned the facts in their written argument at para 5 on page 2 that "અરજદારને તેમનો કાયદા મુજબનો થતો ભાગ, હકક, હિસ્સો આપી દેવામાં આવેલ છે અને જામનગરમાં પંચશીલ સોલવન્ટ ઈન્ડસ્ટ્રીઝ કે જે અમો સામાવાળા નં. ૧ થી ૩ તથા ગુજરનાર પ્રફુલભાઈ ચત્રભુજ ઠકરાને તેમ ચારેય ધ્વારા વડિલોપાર્જિત મિલકતોમાંથી ખરીદ કરવામાં આવેલી હતી અને તે પંચશીલ સોલવન્ટ ઈન્ડસ્ટ્રીઝના ભાગીદારી દસ્તાવેજમાં સામાવાળા નં.૩ જગદીસ ચત્રભુજ ઠકરાને તથા ગુજરનાર પ્રફુલભાઈ ચત્રભુજ ઠકરાને તે મુજબના ભાગીદારો તા.૦૧/૦૪/૧૯૯૮ ના ભાગીદારી દસ્તાવેજમાં રહેલ હતા અને તે પછી તા. ૨૭/૦૨/૨૦૦૩ ના રોજ પ્રફુલભાઈ ચત્રભુજ ઠકરાને અવશાન થતા તેમની જગ્યાએ શ્રીમતી બીનાબેન પ્રફુલચંદ્ર ઠકરાને ભાગીદાર તરીકે રાખવામાં આવેલા હતા. This admission supports the version of the applicants that the suit properties were ancestral properties and the alleged M/s. Panchshil Solvent Industries of Jamnagar is purchased from the income of ancestral properties.

12. Now, considering the facts of main application, it is relating to revoke the probate issued by this Court in favour of the opponents Nos.1 to 3, it is pending for final decision and during the pendency of it, the applicants have filed present application for interim injunction against the remaining and disposed of the properties. Perusing the record, it appears that the opponents Nos. 4 & 5 have been ordered to be deleted, passed below Ex.16. But looking to the record, the applicants approached before the Hon'ble High Court of Gujarat against the order passed below Ex.16 and in that regard, the Hon'ble High Court has not passed any specific order and directed that the learned trial judge shall consider the same in accordance with law uninfluenced by the observations recorded in the impugned order in Sp.C.A. No. 5194/16. Looking to the relief prayed in application Ex.5, the applicants have prayed the relief of ad-interim injunction against the opponents Nos.1 to 5.

Perusing the entire record, it appears that opponents Nos.1 to 3 have filed applications at Ex.18 & at Ex.32 under O.7, R.11, under O.7 R.13 and after hearing both the sides, this court has dismissed the said applications.

Mr. Sarfaraj D. Jokhia, L.A. for the applicants has placed his reliance on a case of 1992 (1) G.L.H. 60, the said case law is on the provisions of Secs. 151, 115 and on O.39, Rr.1 & 2. I have gone through the said citations and provisions I do agree with the same.

Mr. Dipakbhai B. Lakhani, L.A. for the opponents Nos.1 to 3 has placed his reliance on cases reported in 2010(2) G.L.R. 1041, 1997 (3) GCD 572 & 1995 (2) GCD 55, they are on the provisions of O.39, R.1 & 2, I do agree with the principles discussed in them, but the facts of present application and facts of them are different. Mr. Lakhani also relied upon 1997(3) GCD 418, this case law is on the provisions of Sec.34 of the Specific Relief Act, in which the Hon'ble High Court has observed that the object of the proviso is to avoid a multiplicity of suits and to prevent a person getting a declaration of right in one suit and immediately after seeking further relief, already available in another. I am in agreement with the said case law, just to avoid the multiplicity of proceeding to restrain the further transfer of the properties mentioned in this application by the opponents. Mr.

Lakhani has also placed his reliance on AIR 1992 Allahabad 55, this citation is with regard to Sec. 47 of C.P.C., the facts of present application and said citation are different, no such question relating to execution proceedings and judgment-debtor, as discussed in said citation, is involved in present application.

As discussed above in details, the applicants' this application is not allowed, will suffer irreparable legal injury, which cannot be compensated in terms of money and opponents will not suffer any irreparable legal injury, so, the applicants have prima facie case and balance of convenience is in favour of the applicants, hence, above points Nos. 1 to 3 are replied in the affirmative and for point No. 4, following order is passed in the interest of justice.

ORDER

The application Ex.5 of the applicants is hereby ordered to be allowed.

The ad-interim injunction is ordered to be issued as prayed in terms of para 3(1) & 3(2) in this application against all the opponents.

Signed and pronounced in open court today 07th day of November 2017.

Date : 07/11/2017.
Porbandar.

(Nilesh Ashokbhai Ejner)
GJ-00484
Principal Senior Civil Judge
Porbandar.

CIVIL MISC. APPLICATION NO. 34 OF 2015**P O I N T S**

- 1) Whether applicants prove that the opponents Nos. 1 to 3 have obtained the probate certificate in C.M.A. No. 26/93 keeping them in dark ?
- 2) Whether applicants prove that the properties as mentioned in para 2 (1) to 2(6) in this application are ancestral properties and in these properties, there was the 1/4 share of late Mr. Prafulchandra Chatrabhuj Thakrar ?
- 3) Whether applicants prove that they being legal heirs of late Mr. Prafulchandra Chatrabhuj Thakrar, are entitled to get the aforesaid 1/4 share ?
- 4) Whether opponents No. 1 to 3 prove that the Hon'ble Court has issued legal probate certificate in C.M.A. No. 26/93 in their favour ?
- 5) Whether opponents Nos. 1 to 5 prove that the applicant No.1 has remarried to Mr. Rajeshkumar Raichura and he has adopted the applicant No. 2 as his son ?
- 6) Whether opponents Nos. 1 to 3 prove that they have given the share, right etc. to the applicants from the properties mentioned in this application which fell in the share of late Mr. Prafulchandra Chatrabhuj Thakrar ?
- 7) Whether opponents prove that present application is barred by the provisions of delay, latches and limitation ?
- 8) Whether applicants are entitled to get any relief as claimed ?
- 9) What order and decree ?

Date : 07/11/2017.
Porbandar.

(Nilesh Ashokbhai Ejner)
Principal Senior Civil Judge
Porbandar.