



Order Below Exhibit- 5 In
Regular civil suit no.01 of 2024

Advocate : Ld. Advocate Mr.H.S.Manek for plaintiff.

Ld. Advocate Mr.J.V.Zala for defendants

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1. Read the application and the reply filed thereof. Perused the documents on records.
Plaintiff has filed the present suit for the old tenure land bearing R.S.No.903 (old R.S.No.267/2) H.02-49-47 and Acre 06-07 Guntha, situated at Moje Thoriyali, Taluka Paddhari & Dist. Rajkot with the relief of declaration, Cancellation of Gift-deed & perpetual injunction against the defendant. Along with the present suit plaintiff has filed the present application under Order 39 R. 1 & 2 for getting interim injunction as prayed for. The defendants were served with the notice. Defendants filed their reply vide exhibit-12 wherein they have denied the facts of the plaintiff application and prayed for rejection of the present application and plaintiff has filed counter affidavit against the reply of defendant vide Ex.18.
2. (2.0) This Court have gone through the record and pleadings of the parties. Heard the learned Advocate of the respective parties. An advocate of the plaintiff orally argued that the suit property is an ancestral property of the plaintiff and defendants. As the suit property is an ancestral property thus, without getting consent of other co-owners, father of the plaintiff namely Shyamjibhai Maganbhai Pedhadiya had not any absolute right to transfer the suit property in favor of defendant no. 2 through Gift-deed. As

soon as plaintiff knew the said facts about the Gift-deed, he has filed the present suit for getting declaration, cancellation of Gift-deed and perpetual injunction against the defendants and he had also submitted following citation in support of his arguments i.e ***Rohit Chauhan versus Surinder Singh & ors., 2013 Lawsuit (SC) 600.***

(2.1) An advocate of the defendant has orally argued that the present plaintiff has not come with clean hands before the court & suppressed the material facts of the suit property that the suit property had been received to late Shyamjibhai Maganbhai Pedhadiya through partition and his name mutated in revenue record vide entry no.803 in the year of 1974. Thus, as per the principles laid down by our Hon'ble High Court and Hon'ble Supreme Court that, when joint hindu family property is partition, share of parties become their self-acquired properties. Further, he has argued that the Gift-deed cannot be revoke or cancel by third party as per the section 126 of Transfer of Property Act, 1882. Learned Advocate of the defendant has also submitted that the document produced by plaintiff vide Mark 4/3, 4/4, 4/5 are revenue record of suit property and name of the defendant no.2 was mutated vide entry no.6379. The said revenue records are part of public record & defendant No. 01 has executed register Gift-deed in favour of defendant no.1 which is title document and requested to this court considering all this facts to reject the present application. Then after, the present application was taken for order on its merit. To adjudicate the application following points for determination may arise.

1. Whether the plaintiff shows his *prima-facie* case?
2. Whether the Balance of convenience is in favor of the plaintiff?
3. If injunction would not be granted than irreparable injury will cause to the plaintiff?

4. What order?
3. My answer regarding points for determination:
 1. In Negative.
 2. In Negative.
 3. In Negative.
 4. As per final order.

:: Reasons and Findings ::

4. As all the issues are interrelated and interconnected, it is in the interest of justice to deal with all the issues together.
5. As per order 39 R 1 and 2 of the Code of Civil Procedure, the temporary injunction can be granted by a court in the following cases:
 - (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 power to grant a temporary injunction is in the discretion of the court. This discretion however, should be exercised reasonably, judiciously and on the legal principles. Injunction should not lightly grant as it adversely affects the other side. Generally, before granting the injunction, court must be satisfied about the following aspects namely, prima-facie case, irreparable injury and balance of convenience.

6. The first rule is that the applicant must make out a ***prima-facie case*** in support of the right claimed by him. The court must be satisfied that there is a *bona fide* dispute

raised by the applicant, there is strong case for trial which needs investigation. A *prima-facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a *prima-facie* case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.

7. Existence of the *prima-facie* case alone does not entitled the applicant for a temporary injunction, but the applicant must satisfied the court that he will suffer ***irreparable injury*** if the injunction as prayed for is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.
8. Third condition for granting interim injunction is that the ***balance of convenience*** must be in favor of the applicant. In other words, court must be satisfied that the comparatives mischief hardship or inconveniences which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.
9. This Court also want quoting celebrated and remarkable observation by ***Lord Diplok*** in ***American Cynamid Co. V/s. Ethicon Ltd 1975(2) WLR 316***, “*The object of the interlocutory injunction is to protect the plaintiffs against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented*

from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favor at the trial. The court must weigh one need against another and determine where the balance of convenience lies.”

10.(10.0) To prove the present application, the plaintiff has to prove that the suit properties are ancestral properties and defendant no.1 has no right, title and interest in the suit property to transfer in favor of defendant no.1. The question regarding the suit property is ancestral or coparcenery or self-acquired property of defendant no.1 will be decided at the time of trial. On perusal of the entry no.803 produced vide mark-4/9, it prima-facie shown that the suit property were partition amongst the hairs of Makanbhai Vaghabhai Pedhadiya. In the recent case of **Angadi chandaranna versus Shankar & ors. Civil Application No.5401 of 2025 (arising out of SLP (C) no. 6799 of 2022**. Our Hon'ble Supreme Court reaffirmed on **22nd April 2025**, that after the joint family property has been distributed in accordance with law, it ceases to be joint family property and the shares of the respective parties become their self-acquired properties. Further, it is pertaining to note that, one of two or more co-owners of immovable properties legally competent in that behalf transfer his share as per section 44 of Transfer of Property Act, 1882. Moreover, as per section 126 of Transfer of Property Act, 1882 only doner or donee can sought to revoke or cancel Gift-deed, herein the case, plaintiff is neither doner nor donee of the Gift-deed. Moreover, whether such disputed Gift-deed Reg. No. 1030, dtd. 29/03/2023 was legally executed or not is question of evidence to be proved in trial.

(10.1) The name of defendant no.2 was enter in revenue record in virtue of the Gift-deed. The said revenue records were produced on record vide Mark-4/3, 4/4 and

4/5. Perusing the said abstract, it appears to this Court that the Gift-deed is register as per The Registration Act and revenue records which are one of the part of public document. Therefore, when a public document is produced before this Court *prima-facie* it is presumed that the said document is executed as per the law and hence no question can be raised *prima-facie* upon such document. Whether such document was executed by producing any fake documents or keeping the revenue authorities into dark is a question of law which can be adjudicated after recording of the evidences, but at this moment this Court is of the view that *prima-facie* the said property was mutated in the name of defendant no.2.

(10.2) Now perusing the Gift-deed which was executed by defendant No.1 in the favour of defendant No.2 & copy of the said Gift-deed submitted before this court by plaintiff vide Mark-4/2. On perusal of the said Gift-deed, it appears to this Court that which was duly executed before the Sub registrar office and *prima-facie* it appears to this Court that the said Gift-deed is title documents & public document and was executed in accordance with the law. Thus, *prima-facie* it appears to this Court that the suit property received by defendant no.1 through notional partition took place amongst the member of the family and after the joint family property has been distributed in accordance with law, it ceases to be joint family property and the shares of the respective parties become their self-acquired properties. Therefore, it is *prima-facie* seems to this court that the suit property was of ownership of the defendant No.1 at the time of executing the said disputed Gift-deed. Therefore, taking into consideration the discussion made above, this Court is of the view that the plaintiff have failed to prove his *prima-facie* case.

Balance of convenience and Irreparable injury.

- 11.The second and third point which is to be decided while deciding the injunction application is regarding the balance of convenience and irreparable injury. The court must be satisfied that the comparative mischief hardship or inconveniences which is likely to be caused to the plaintiffs by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it. In the present matter, as *prima-facie* case appears not in the favor of plaintiff, the other two ingredients are also not in her favor because conduct of the plaintiff and *prima-facie* suppression of the facts.
- 12.Taking the above-said discussions into consideration, this court is of the considered view that the plaintiff had failed to show her *prima-facie* right; balance of convenience and irreparable injury in her favor and by suppression of facts, she is not entitled for any relief. Therefore, in the interest of justice, I hereby pass the following order.

:: ORDER ::

1. The present application is hereby rejected.
2. Parties of the present suit are hereby directed to co-operate to speedy disposal of the present suit.
3. No order as to cost.

Announce in open court Today on.09/05/2025

Date.09/05/2025
Place.Paddhari

(Mr.Rashmikan Ramchandra Baria)
Principal Civil Judge & JMFC,
At.Paddhari Dist.Rajkot,
Judge Code : GJ01609.