

GJSK030026732023



**In the Court of Principal Senior Civil Judge,
Sabarkantha @ Prantij**

Kamalaben Chandulal Kadiya & Ors.

...Plaintiffs / Applicants

// Versus //

Dipakkumar Vadilal Kadiya & Ors.

...Defendants / Opponents

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Appearance :

Ld. Adv. Mr. S. N. Shah appeared on behalf of the plaintiffs.

Ld. Adv. Mr. R. K. Brahmabhatt appearance on behalf of the
defendant No.1.

The defendant No.2 appeared personally.

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Order Below Exh. 5

In

Regular Civil Suit No. 67 / 2023

1. The present application at Exh. 5 has been filed for grant of interim injunction under Order-XXXIX, Rule 1, 2 and Section 151 of Code of Civil Procedure, 1908.
2. The applicants are the plaintiffs and the opponents are the

defendants and in order to avoid repetition they will be mentioned as plaintiffs and defendants respectively and the movable and immovable properties as mentioned in *para - 4* of the present application will be mentioned as “***disputed properties***”.

3. Facts of the present application in short are as under:

That the plaintiffs are residing at Prantij. That Kantaben W/o. Maneklal Babaram Kadiya is sister in law of the plaintiff No.1 as per pedhinama and the plaintiff Nos.2 & 3 are nephew of Kantaben Maneklal Kadiya. That Kantaben Maneklal Kadiya is died on 20/12/2022 at home. House bearing City Survey No.3168 admesuring 54.34 Sqr.mtr. is in running in the name of Kantaben and she was having Account in State Bank of India, Prantij branch bearing A/c. No. 010829178397 and the plaintiff No.2 was administered her account and take care of her. That the defendant No.1 had executed false written deed through advocate R. K. Brahmhatt on 12/12/2019 in presence of the friends and community members and advocate, the said written deed has been executed for nomination of Dipakkumar Vadilal in the bank account of deceased Kantaben.

That plaintiffs have stated that Kantaben had executed will in favour of Dipak Vadilal Kadiya and she has been given the right to administer as the owner. Despite the right and entitlement of the plaintiffs, defendant No.1 does not give a copy of the will or the belongings and has confiscated all the written things. The plaintiffs have right in the movable and immovable properties of Kantaben Maneklal Kadiya. Therefore, the plaintiffs have send legal notice to the defendants by RPAD on 27/04/2023. The defendant No.1 has grabbed the share of the plaintiffs of the disputed properties. If the defendant No.1 withdraws the money of the deceased and sold the immovable properties of the deceased, their right will be destroyed hence it will be a reason to file a new claim and and the defendant No.1 has entered his name as a nominee with false evidence and has become the administrator. So that if he withdraws the amount of the deceased, the plaintiffs will suffer a loss that cannot be assessed financially and the immovable and movable properties are in possession of the defendant No.1. The plaintiffs have prima facie right over the movable and immovable properties of deceased Kantaben. Hence, plaintiffs have filed this application for getting status quo of the

disputed movable and immovable properties qua possession.

4. This suit was registered on 17.10.2023 and summons were issued to the defendants. On serving of summons to the defendants, the defendant No.1 appeared through his learned advocate vide **Exh.7** (Vakalatnama) and he has filed written statement vide Exh.21 wherein he has denied all the facts of the present application and further he has stated that the present application is barred by suppression of material facts, waiver and estopal. He has further stated that Kantaben evicted the plaintiffs from her all movable and immovable properties and handed over all properties to the defendant No.1 by executing affidavit before Notary Shri A. G. Irani. Kantaba has given authority to the defendant No.1 and according to her statement, not a single rupee is to be given to the plaintiffs from any of Kantaba's properties. Hence, it is requested to dismiss the present application.

- 4.1 Defendant No.2 appeared personally and filed his written statement vide Exh.9 wherein he has denied all the facts of the present application and further he has stated that plaintiff No.2 was having joint account with Kantaben

which was pension account hence one name was reduced and only Kantaben's name has been kept as a pensioner as per the law. No one else's name can be entered in the pensioner's account except her, so the name has been reduced accordingly. Kantaben's account was closed through her nephew defendant No.1 - Dipakkumar Vadilal Kadiya and the amount was transferred to his account on 31/03/2023 and since there is no amount in the account or the account is not active, no injunction can be given.

5. On the basis of the pleadings of the parties the following issues have been arisen for the determination of the present application.

:: I S S U E S ::

1. Whether the plaintiffs prove that there is a prima facie case ?
 2. Whether the plaintiffs prove that balance of convenience is in their favour?
 3. Whether the plaintiffs prove that if interim relief as prayed for is not granted, it will cause harm which cannot be compensated in terms of money?
 4. What order?
6. For the reasons given herein, my reply to above issues is as

under :-

1. Partly in the affirmative.
 2. Partly in the affirmative.
 3. Partly in the affirmative.
 4. As per final order.
7. Issue Nos. 1 to 3 are discussed together in order to avoid repetition of facts and for convince of both the parties.
8. I have heard the arguments on both the side.
9. It is well settled principle of law that while issuing a temporary injunction, the tests to be applied are (1) Whether the plaintiff has prima facie case? (2) Whether balance of convenience is in favour of the plaintiff? and (3) Whether the plaintiff would suffer any irreparable loss or injury?, if prayer for temporary injunction is not granted. It is also well settled that mere *prima facie* case by itself is not sufficient to grant injunction, the Court further has to satisfy that non-interference by the Court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. If we see the provision contained in **Under Order-XXXIX, Rule-1 of**

Code of Civil Procedure it is as under:-

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 defraud his creditors, 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 as the Court thinks fit, until the disposal of the suit; or until further orders.

10. Heard Ld. Advocate for the parties, read the present application and record. Ld. Advocate for the plaintiffs has argued that plaintiffs have prima facie case and factor like balance of convenience is also in favour of the plaintiffs. So, their application for interim injunction should be granted.
11. To support of their case, plaintiffs have produced the documentary evidence vide Mark 4/1 to Mark 4/23 which are

duly read and considered by this Court. On the otherside, the defendants have produced the documentary evidence vide Mark 11/1 to Mark 11/23 which are duly read and considered by this Court.

12. To decide whether there is prima facie case or not, I deem it fit to peruse various documents produced by the plaintiffs and the defendants vide document list bearing Exh.4 and 11 in support of their respective statements. Now, upon perusal of the aforesaid documents, the heirs cannot be determined without taking evidence. Multiplicity of cases may arise if an order is not passed. After carefully going through the material available on record, I have come to the conclusion that legality of the affidavit of deceased Kantaben can not be decided without taking evidence hence considering the protection of the right of the both parties, in factual aspect of this suit, in my opinion, both parties of this suit are hereby ordered to maintain status quo of the disputed movable and immovable properties. Therefore, I decide point Nos.1 to 3 partly in the affirmative and in the interest of justice for point No.4, I pass the following order.

:: O R D E R ::

1. This application for temporary injunction is hereby partly allowed.
2. Both parties of this suit are hereby ordered to maintain status quo of the disputed movable and immovable properties qua possession and title till further orders.
3. No order as to cost.

Signed and Pronounced in this open court on this 24th day of September, 2025.

Data : 24.09.2025
Place : Prantij

(Bhargavsinh Ravsinh Solanki)
(Judge Code No. GJ00919)
Principal Senior Civil Judge,
Sabarkantha at Prantij.

K_J_P