

ORDER BELOW EXHIBIT NO.5 & 32

This order shall dispose off the application filed by the plaintiff vide Exb 5 Under Order XXXIX Rule 1 and 2 for granting of interim injunction restraining the defendants or its agents from interfering or creating any hindrance in peaceful use of suit property and similarly by the Defendant no 5.1-5.3 vide Exb 32 under Order XXXIX Rule 1 and 2 for granting of interim injunction restraining the Plaintiff or its agents from interfering or creating any hindrance in peaceful use of suit property

A) Before deciding this application it is appropriate to give a brief resume of the facts as averred in the plaint, which are as follows:

- I. Land bearing the Survey no 20; admeasuring Acre 9-00- Guntha; Hectare Are 3-64-52 also known as the “Tokralana Margnu” situated at Ghaghosar village, taluka Limbdi, Surendranagar (herein after referred to as "the suit land/Property") is involved in present dispute.
- II. Plaintiff has given out that he has bought the above named Farm at the price of the Rs. 6,000/- from the Defendant no 2,3 & 4.1 and the mother of them; Vijuben nanajibhai koli patel when the Gafurbhai nanjibhai was alive with the registered sale deed No 1075 on 14/05/1991.
- III. Then he gave out the Current Four corner details of the suit property where in the North direction - Rajput Narsangbhai dansingh have his agriculture land, similarly in South Direction- Dharmendrasingh vajubhai have his agriculture land, similarly in East direction Vaghari Ramjibhai Gandabhai have his agriculture land, similarly in West direction – Patel Nagarmoti; father of the Plaitniff have his agriculture land and then gave out that Four corner details of the suit property when it was bought the suit property on 13/04/1960 vide registered sale deed no 410 by the Shivabhai ukabhai, bhagabhai ukabhai & nanjibhai Ukabhai from the Pitambar Khima where in the North direction – Harijan bhima jasha have his agriculture land, similarly in South Direction- pitambar khimas’s other agriculture land, similarly in East

direction Vaghari Ramjibhai Gandabhai have his agriculture land, similarly in West direction – Patel Nagarmoti; father of the Plaintiff have his agriculture land and then gave out that later it was bought by him and he have the possession of the same and is the owner of it as it was sold to their deceased mother Ratanben Nagarbai and now the plaintiff being the legal heir of her; they are the owner of the same.

- IV. He then gave out that property bearing the Survey no 20 land was being sold by the Defendant no 1 after the year 1960, in the year 1969 to the Defendant no 5 Nitabharmanedrasingh's father Dharmendrasingh Vajubha Rana and Rana Lakhubha Vajubha vide Registered sale deed no 479 on 03/04/1969 measuring Acre 25-14 Guntha of the Survey no 20 land however it was sold to him in the year 1960 by the Defendant no 2-4 to the Defendant no 1 and thus it can be termed as no sale and no possession of the same could be given and in reality possession was given of Acre 16-14 Guntha and not the possession of the Acre 25-14 Guntha.
- V. He then gave out that initially if the calculation's are to be done then also the agriculture land of the Moti Zavar & Khima Zavar's Tokaralana Marg's land which was initially of the Acre 28-00 Guntha; of which the Acre 09-00 Guntha was sold to their mother by the Defendant no 2-4 in the year 1960 and thus after minus the 9 acre land from the initial total of it then there's left land is about 19 acres and from that also Acre 2-16 Guntha was kept by the Defendant no 1 by himself and thus there could be sale of the Acre 16-14 Guntha only and not the more land than that and that's where the Defendant no 5 can have the maximum possession of the same but due to the mistake in the sale deed more area was mentioned and was sold on paper despite they being the owner of the same and the Defendant no 5 don't have the possession of the same and they not being the owner of the same.
- VI. He then gave out that west of the suit property which in common parlance is famous and known as the Tokralanu Marg his father's property is there where in of the 9 Acre land is in their possession, Acre 2-16 Guntha is with the Defendant no 1 and the Rest acre 16-14 Guntha land is with the Defendant no 5.1 but is under the administration of the Defendant no 5.2. & 5.3 and which is the actual position of the

land. He then gave out that when the Defendant no 5 dharmendra singh was alive who used to tell his father and him that in his sale deed more area is shown than what they have in the possession and they don't have the full possession of the same and the revenue records also gives more land to them and he wanted to do in their name and he is ready to sign anywhere where ever he seeks and ask him to do so but after his death his legal heirs also used to say the same as their father and his father has the long time relationship and the possession of the land was with him and they have also sign anywhere and would effect the sale deed accordingly and whenever asked to do the same they used to reply they will do it and thus on the basis of their assurance and trust he didn't proceeded further however now the Defendant no 5.2 & 5.3 15 days back from the date of the filling of the suit meet him and gave that land is now in the name of their sister and they don't want to do anything now despite they being agreed earlier and since they share long term relationship why raise the dispute now for it and asked to do the same they asked him to do whatever he could and thus he had to file this suit.

VII. Plaintiff then gave out that Defendant no 2,3,4 legal heirs have sold the property in the year 1991 and the possession of the same is also there and the Defendant no 1, have sold the property to the Defendant 2,3,4 in the year 1960 and thus their possession and he have the possession as per the sale deed and it was after that sale deed there was the mistake in the area of the land from acre 16-14 guntha to the acre 25-14 Guntha and thus is the bogus and fake sale deed in the revenue records they have the land in their name which is acre 25-14 Guntha but they don't have the possession of the same and thus when they have the first sale deed and thus they have the prima-facie case and purely on the basis of the measurement area they cant be disturbed on their land and the defendants don't become the owner of the same nor they have the right to interfere in his possession.

VIII. Plaintiff then gave out that earlier they were ready to rectify their mistake and were agreeing to the correct the mistake and sale the land to them and now they are refusing to do the same which is not right also as they are trying to take the benefit

of the revenue records mistake and trying to kill over his right which would result into the loss which couldn't be compensated in the terms of anything and thus seek the interim injunction over the suit property while restraining the defendants or it's agent or their servants while not disturbing their peaceful possession and not sale the property or do any change over the property which would result in to the transfer of the ownership or create any lien on it or there is any change in the revenue records of the same.

- IX. Plaintiff has alleged that defendants have illegally done the transaction over the land without having the permission while mistaking in the area and thus on the illegal sale they will now try to interfere in its peaceful possession by way bringing over the servant/agent or themselves and thus try to take the forceful possession of the same in the disguise of the building house and. He is threatening him to take over the possession of the same because of the mistake in their sale deed.
- X. Therefore, the plaintiff was constrained to file this suit. In the said suit, permanent injunction was prayed for restraining the defendants from transferring, alienating or dealing with the suit land in any manner.
- XI. He then gave out that he has filled the documents relating to the ownership of the land which belongs to them vide Mark 3 and relevant revenue entries which prove that how they got the land from their ancestors and thus their name came on to the revenue record and till today they are having the possession of the same and paying the relevant revenue tax on it and the copy of the illegal sale done by the Defendant no 1 with the other Defendant's . he than gave out that since when he had bought the suit property there was no Survey prevelant at that time and hence there is no mention of the exact survey no in his sale deed; copy of which has been given by him vide Mark 3/3 which clearly gives his position and the agriculture land named as Tokralanu Marg and then the owners of the land sold it to their mother in the year 1991 vide Mark $\frac{3}{4}$ sale deed which also clearly mentions the same and thus Mark 3/35 sale deed document of year 1969 by the Defendants done was without any authority and fake and thus sought the interim injunction on this basis as he has Along

with this suit plaintiff also filed an application under order 39 *rule* 1& 2 of CPC seeking injunction pending the suit for restraining the defendants, their servants, agents from transferring, selling, gifting, renting or creating third party right or handing over physical possession to anyone over the suit land.

- XII. Plaintiff have done the arguments of this application under order 39 rule 1&2.
- XIII. Plaintiff have filled the Rejoinder in the case vide Exb 60 while the most of the things are as per the facts given in the plaint itself and thus not repeated over again for the sake of /the repetition and in it they have denied the contents given by the Defendants in their WS and given that they have the possession of the suit property and not the Defendant's and their suit is in the limitation period and thus suit can be heard by this court.

B) Defendant's version

- It would be worthy to note here that Defendant has originally filled the suit Defendants 1-5 however some of the Defendants died and their legal heirs were brought on record but some didn't turned to the court despite being served the notice for the appearance in the court and thus on the fixed date when they didn't made his/their appearance personally or through their advocate even though the summons was served to him and Thus it was decided Ex-parte be proceeded against him/them and only Defendant no 5.1 to 5.3 & 1.1 have filled the WS and reply to the Interim injunction application vide Exb 31 & 42. It would be worthy to mention here that the defendant number 5.1 to 5.3. have also filed the counter claim along with it and they had also filled the interim injunction application vide Exb 32 where in they have sough the interim injunction restraining Plaintiff from interfering in their peaceful possession either themselves or through their agents, servants or by any other their persons till the suit is decided
- The defendant no 5.1 to 5.3 in their Exb 31 have denied the allegations of the of the plaintiff while giving out that the Suit filled by the Plaintiff is not sustainable and

liable to be dismissed as its not in the limitation period nor there appears to be any proper cause of action against them and it is the plaintiff who has filled the case on the fake data and facts in the court in order to get the possession of their land and thus this fake case while The defendant has denied the facts mentioned in the plaint.

- Defendant no 5.1-5.3 had submitted the oral arguments initially which be considered of this application under order 39 rule 1&2 for the Exb 5 & Exb 32 Application..
- Defendants have given out that Plaintiff have hidden the basic facts and have not come clean hand to the court and their suit is barred by the law of the limitation as the proper sale deed done by their ancestors was done in the year 1969 and it was then they had become the owner of the land and hence to challenge them limitation period is of 3 years and which has passed long back and thus cant be adhered to and they or their father have never accepted that they had the excess land and the plaintiff have created the fake facts on its own. He then gave out that it's the 14/05/1991 dated no 1075 sale deed which is fake and without any authority of the acre 9:00 guntha land as it void -ab-initio as it was sold when the owners didn't had the land as the land originally belonged to the moti zavar whose land revenue records are given by the plaintiff vide mark 3/1 and which specifically gives he owned 3 land and 2 of which were known as the Tokralanu marg.
- He than gave out that since the registered sale deed no 410 dated 13/04/1960 is to be seen then there is no survey mentioned by the seller and only Tokaralanu marg is mentioned in it and Pitambar khima had 2 agriculture land with it and thus when there is no proper details of it then no possession of him can be assumed as there is no specific details in it while it's a true fact that they became the owner of the survey no 20 land in the year 1969 by Mark 3/35 sale deed copy of which has been produced by the plaintiff himself and they have the possession of the same and doing the farming on it& the trees planted by him are also there from the last 40 years and they are taking the produce from it while denying that plaintiff ever had any right over it.

- He then gave out that they are not the administrator of the land but as per the internal family arrangement Defendant no 5.1 is doing on its part. he then gave out that it was his father has bought the land from the Defendant no 1.1 fathers in the year 1969 as per the law and it's the first sale deed of the suit property and they have done the improvements in the suit property while planting the trees and doing the agriculture activities on it while taking the produce from it and since they have the possession and owner of it and thus if the interim injunction is granted against them they would suffer irreparable loss as they have the prima-facie case the land is running in their name and thus balance of convenience is in their favour and not the plaintiff as claimed by him and and since they were doing the farming on it from then and they have the possession of the same and thus it needs to be protected while denying that they never talked about the amendment in the sale deed or area of it as it was proper and plaintiff has created fact suiting to his need and thus they have also filled the Exb 32 Interim injunction application where in the interim injunction restraining Plaintiff from interfering in their peaceful possession either themselves or through their agents, servants or by any other their persons till the suit is decided and plaintiff and thus on the false facts plaintiff have approached the court and is trying to mislead the court.
- He then gave out that Plaintiff is not in the possession of the land and he is owning it legally it. Since land is in the long possession of theirs and they are the owners of it as proper sale deed was done in their favour with the correct survey number and the proper area and and this leads to the true fact in that suit that they became owner in 1969 and thus now suit is time barred in the nature and thus plaintiff's lie is also exposed. Thus balance of convenience lies on their favour but he is the owner of it & became the legal owner to it by the way of the will and since this way also suit is barred by law from the date of the sale will and liable to be dismissed and now plaintiff want to eat upon their right and thus filled the false suit and thus he have the prima-facie case and the balance of the convenience lies in his favour and if not allowed they will have to suffer as they are in the possession of the land and

they are doing the farming on the land and if the plaintiff are allowed to disturb their peaceful possession they would suffer loss and thus interim injunction be granted in their favour.

- He gives out that they have never threatened or spoke anything to anyone including plaintiff and all are law abiding citizen.
- It would be worth to mention here that Defendant no 1.1 have also filled the separate WS while giving out that plaintiff have filled the fake case without any bias and standing and thus liable to be dismissed as its barred by the law of the limitation and there is no cause of action on their plaintiff and is based on the fake created facts while denying the contentions of the plaintiff which is given in their plaint. He has also repeated the same facts as which has been given by the Defendant no 5.1-5.3 in their Exb 31 WS and thus most are not repeated for the sake for the convenience.
- He then gave out that sale deed dated 14/05/1991 registered sale deed number 1075 which gives out the sale deed of the survey no 20 of the area 9 acre is wrong as his father never sold out the suit property land to the shivabhai ukabhai but it was sold to the defendant no 5 father were in he was sold Acre 25.14 guntha land and remaining land ; Acre 2.16 guntha is with them and they are doing the farming on it and not the plaintiff and any say of him is false and baseless

FINDINGS

- 1) It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court normally applies the following tests:-
 1. Whether the plaintiff has a prima facie case;
 2. Whether the balance of convenience is in favor of the plaintiff; and

3. Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.
- 2) The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff 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. The need for such protection has, however, to 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. The Court must weigh one need against another and determine where the "balance of convenience" lies.
- 3) In the present case court proceeds to see if all these three ingredients are fulfilled. The existence of a prima facie case and infraction of such right is a condition precedent for grant of temporary injunction. The prima facie case doesn't mean a case proved to the hilt. The only requirement is that on the face of it there should be a case in favor of the plaintiff. 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.
- 4) Existence of the prima facie case alone does not entitle the applicant for a temporary injunction, but the applicant must satisfy 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.

- 5) Other essential 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 comparative 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.
- 6) Therefore the principal question which requires consideration/ is; whether the plaintiff is in a position to establish his prima facie case and is entitled to get interim injunction during the pendency of the suit.
- 7) To settle this controversy it is necessary to peruse the documents produced and record of the case in hand. On perusal it is found that plaintiff has averred in his pleading that he got the possession of the suit land on the basis of sale deed done by the Shivabhai Ukkabhai in the year 1960 by the Khimabhai zaver copy of which is vide Mark 3/1 and then bought by his mother vide Mark 3/2 sale deed by the then sellers Shivabhai ukkabhai and all and it is an ancestral property and since then he is possession of the suit land. However if the Land revenue records are seen then produced by the plaintiff then its shows that property is still in name of Nitabhaa Dharmendrasingh Rana which certified copy has been produced by him vide Mark 3/ 29-30 and then the sale deed of the year 1969 was entered in to the revenue records on 23/07/2005 vide entry no 385 in the Revenue 6 haw patrak where in the sale deed was done by the Pitambar Khimabhai to the ranan lakhubha and rana dharamendra singh vajubha who are the ancestors of the Defendant no 5.1-5.3.
- 8) It is as per the say of the Plaintiff that in the year 1960 there was no survey no on the record and thus the sale deed was done on the basis of the area and the Agriculture land from which it was known as which in this case is the TokralaNu marg and thus the sale deed of the year 1960; (Mark 3/1) mentions the same as only this and on which basis they bought from the owner of the land in the year 1991 (Mark 3/2) by their mother and thus there is clear chain link in it however when the mark 3/1 Revenue form no 6 is seen than it can be seen there are 2 agriculture land in the name of the Pitamber Khima zaver after the death of the Moti zavar and there is 2 land

admeasuring the acre 24 and acre 12 land and thus it can be clearly seen that 2 lands are there with the name of the Tokralanu marg. Thereafter Mark 3/2 gives the name of the Moti zavar and the land held by him however if the Mark 3/3 sale deed is seen there is no survey mentioned in it and it is done on the 13/04/1960 however the same documents produced by the plaintiff himself where in the Mark 3/5 ;land measurement book records is to be seen then it is of the 13th January 1956 and it does mention the survey no as 20 which is owned by the Moti zavar on which was farming done by him and thus the say of the plaintiff that in the year 1960 there was no survey falls flat on the ground and brushes off his contention that the reasons for not mentioning the survey no being no existent however they are in existence before the 4 years of the Mark 3/3 sale deed and thus when the Mark 3/35 sale deed of the year 1969 is seen then it can be termed as the first sale deed of the survey no 20 land as it clearly mentions the area and the survey no and the owner of the land and thus it is never proved that there was no survey no and also the fact that Mark 3/7 documents which is the measurement and the allotted survey no list of the year 1955-56 also gives the survey no 20 land in the name of the Moti zavar bhai which is famously known as tokralanu marg and is 28 acre land and thus again plaintiff claim falls flat and thus there exists no Prima facie case in plaintiff's favour as the existence of the Mark 3/35 sale deed comes into the play and thus they need to prove that Sale deed done in the year 1991 is proper and valid (Mark 3/4) which can be done only by leading the evidence in the case and can't be decided at this stage.

- 9) It is also crystal clear that original sale deed of the Mark 3/1 no where mentions the total area of the land, total area sold and the total area left if the cutout is there or what is done of the left over portion and thus it can't be pre-assumed that the area sale deed that is talked of the Survey no 20 land only and is not different while the Sale deed done in the favour of the Defendant no 5 mentions the clear survey no, sale area and left over area and thus they have the prima-facie case.
- 10). Thus when the Ownership of the plaintiff is not proved from the starting or his exact land which is talked about as there are 2 agriculture lands with the name of the Tokralau

nu mark and they are both more than 9 acre and thus at this stage there cant be any assumption however both the parties are claiming that they are doing the farming on it prior to it and thus it can't be construed that only being the owner of it anytime or the otherwise they have the possession of the same and if they are not allowed to farm on the suit property or enter into her property then the plaintiff or the defendant would suffer irreparable loss which cant be compensated by any means as none of the parties have given any evidence or neighbor's statement which would speak out that they are in the possession of the land and thus they are doing the farming on it from the year 1960/1969 or be it 1991. Even none of the parties have produced any taxation slip which would otherwise show that they were doing the farming on it or even the minute details of what they did or any thing which would show that they sold the produce from farming in the suit property and none of the parties have applied for the appointment of the court commissioner which would clear the position on the ground that which land is the neighboring land of the suit property and was owned by whom and which are the survey number adjoining to it as claimed by the either parties as the defendants are contesting that the neighboring detail's of the suit property are fake however he has not lead any proof to that effect and to that effect none of the parties have been able to prove their possession on the land.

11) Also the very fact that Plaintiff's case is based purely on the circumstances and there is nothing on records about the say of the plaintiff like the ownership, share in the property and the death of the co-parceners or if there any other joint owners or the sisters and he has not given the family pedigree chart also nor the Defendants have which can say they are the only legal heirs of the rana lakhubha vajubha & rana Dharmendrasingh vajubha and thus on the entirely revenue record's cant be relied upon as their sale deed was of the year 1969 however the revenue entry is done in the year 2005 and there is no explanation to that effect on the record by the Either Defendant no 5.1-5.3 nor 1.1 and as there is nothing on the record relating to those facts and all the Revenue documents are Xerox copies on the record. Also the

very fact that *“equity Aids The Vigilant, Not Those Who Slumber /On Their Rights.” And thus when their nothing on the records from the front of the Plaintiff’s that court is forced to accept the contentions of the Defendants Ditto or on say of the Plaintiff in-toto as the plaintiff suit also prima-facie suffers to the bared by the law of the limitation as he should have challenged the sale deed which he has never done to that effect nor there is any thing on the record when the Father of the Defendant no 5.1-5.3 died as it is as per the say of him that they had the knowledge of the sale deed done in the year 1969 and but they never choose to act upon it and it is as his father and father of the defendant no 5.1 have given the consent to change the area but really never acted upon it then had he given the notice for the same.*

- 12) *Also the very fact that when neither of the parties are able to prove the possession of the suit property in the present nor any proof is lead nor there are details what type of farming was done or the specific details of the trees planted and thus court cant assume their loss or restrict the parties as balance of convinance is in the favour of the defendant as per the sale deed later done however he has not been show the details that he is the only proper legal heirs of both lakhubha and Dharmendra and thus irreparable loss also cant be assumed in that scenario. Also the very fact that Exb 31 appears to be counter claim however there is no court fees attaced on it nor in the starting it mentions as the counter claim and there is seeking of the relief by the Defendant no 5.1-5.3 in their Exb 31 WS and Exb 32 Interim injunction application.*
- 13) So at this juncture after perusing the records, it seems to this court that the plaintiff or the defendant has not been succeeded to prove his *prima facie* case and they will suffer the *irreparable loss* if defendant’s or Plaintiff’s created any interest over the suit land or allowed to move freely or trespass; therefore "*balance of convenience*" doesn’t lies in the favour of the Plaintiff or either defendant .
- 14) In the light of the facts stated in the application and in the reply and the arguments advanced by learned counsels, at this juncture, I pass the following final order:

:- ORDER :-

1. The application vide exhibit 5 of the Plaintiff & Exhibit 32 of the Defendant no 5.1-5.3 is hereby **Rejected**.
2. Looking to the facts and circumstances of the case, there shall be no order on costs.

Date: 05/05/2025

Vikas Seoul

Additional Civil Judge, Limbdi.

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