

## REGULAR CIVIL SUIT NO.97/2015.

### ORDER BELOW EXH.5 & 55.

[1] During the pendency of the suit, the plaintiffs have filed an application under Order 39, Rule 1 and 2 and Section 151 of the Civil Procedure Code at Exh.5 and have stated that plaintiff no. 2 is the daughter of the plaintiff no. 1. And defendant no. is also daughter of the plaintiff no.1. Defendant No. 2, 3 & 4 are the sister in laws of the plaintiff no. 1. Plaintiffs has drawn family tree in this regards in the plaint. As per the family tree, Ranchhodbhai Mohanbhai Desai died childless, he had made a will, of his 1/3 share of his ancestor's property by registered will on dated 12/01/1959 and had given his share of property to his brother Kunwarjibhai Mohanbhai Desai. On dtd. 09/01/1986 Kunwarjibhai Mohanbhai Desai died and his wife Pratimaben Kunwarjibhai Desai became the successors of 2/3 share of Kunwarjibhai's ancestral property, which he had got from his ancestors (1/3 share from Ranchhodbhai Mohanbhai). Kunwarjibhai died childless and plaintiff's deceased husband was managing all transaction related to his property.

[1.1] Thereafter, Pratimaben had made her will in intoxicant, physically and mentally healthy and fit condition before two witnesses on dtd 25/02/1987. By

the way of such will plaintiff no. 1 and Khandubhai Mohanbhai became the successors of this entire properties of Mohanbhai Desai. In Khandubhai's share also, there is a share of plaintiff's deceased husband and her sister in laws i.e. defendant no. 2 to 4. That way, in disputed property share of deceased Khandubhai and Ashokbhai also had share of  $\frac{1}{2}$  each. And from  $\frac{1}{2}$  share of Khandubhai, there is share of Ashokbhai as well as defendant no. 2/4, which is  $\frac{1}{8}$  each. As per the say of the plaintiffs, deceased Ashokbhai had share of  $\frac{1}{2} + \frac{1}{8}$  from the disputed ancestral properties. There was RTS proceedings pending and defendants no. 2 to 4 had given up their share on farming land, in favour of Ashokbhai and have impliedly surrender their share for Ashokbhai. Plaintiffs have discussed with defendants related to disputed ancestral properties; however, defendants have denied to understand anything and do not want to give up their said share in the disputed suit property. Here, the plaintiffs have have prayed to grant injunction that defendants/his agents/servants/assignees/any other person shall not interfere possession of plaintiffs over such property till the final decision of the case.

[2] On Service of summons of the suit, defendants have appeared through their respective learned advocates defendant no. 1 & 3 through his ld advocate Mr. R. I.

Mansuri and Mr. V. H. Prajapati, defendant no. 2 Mr. H. M. Shukla and for defendant no. 4 Mr. R. I Mansuri. Defendant No. 4 has filed her reply vide exhibit – 12 and has supported the case of plaintiffs. Defendant no. 1 & 3 have filed her reply vide Ex – 41 and have not objected plaintiffs suit and have supported plaintiff. Defendant no. 2 have filed their reply vide Ex – 33. Here the heirs of defendants 2 i.e. defendants no. 2(1) to 2(4) have also filed an application for interim injunction. Defendants 2/1 to 2/4 have prayed to grant interim temporary injunction against plaintiffs that plaintiffs/his agents/servants/assignees/any other person shall not interfere the said disputed suit property by the way of any loan, mortgage, bank institution etc. till the final decision of this case.

[3] In support of his case plaintiff has produced following documentary evidence :-

Sr.	Particulars	Exh/Mar k
1.	Xerox Copy of Ranchhodbhai Mohanbhai's registered will	3/1
2.	Xerox Copy of Kunwarjibhai Mohanbhai's registered will	3/2
3.	Xerox Copy of Pratimaben Kunwarjibhai's registered will	3/3

4.	Xerox copy of Pratimaben's death certificate	3/4
5.	Xerox copy of Veenaben @ Hansaben's release deed	3/5
6.	Xerox copy of Gam Namuno 8-अ Account No. 28	3/6
7.	Xerox copy of Gam Namuno 7 & 12 of Block No. 62	3/7
8.	Xerox copy of Gam Namuno 7 & 12 of Block No. 522	3/8
9.	Xerox copy of Gam Namuno 7 & 12 of Block No. 528	3/9
10.	Xerox copy of Gam Namuno 7 & 12 of Block No. 194	3/10
11.	Xerox copy of Tax receipt of House No. 28, Bardoli	3/11
12.	Xerox copy of Tax receipt of House No. 39, Bardoli	3/12
13.	Xerox copy of City Survey No. 88's certificate	3/13
14.	Xerox copy of City Survey No. 887's certificate	3/14

[3.1] In support of his case defendant no. 2 has produced following documentary evidence :-

Sr.	Particulars	Exh/Mar k
1.	Xerox copy of Gam Namuno 7 of Block No. 194	56/1
2.	Xerox copy of Gam Namuno 6 of Block No. 194, Entry No. 7711	56/2
3.	Xerox copy of Gam Namuno 6 of Block No. 194, Entry No. 7788	56/3
4.	Xerox copy of Gam Namuno 6 of Block No. 194, Entry No. 7793	56/4
5.	Xerox copy of Gam Namuno 7 of Block No. 522	56/5
6.	Xerox copy of Gam Namuno 7 of Block No. 528	56/6
7.	Xerox copy of Gam Namuno 7 of Block No. 62	56/7
8.	Certified copy of City	56/8

	Survey No. 88	
9.	Certified copy of City Survey No. 887	56/9

[4] I have gone through the pleadings of the parties and to decide present application, following points have been raised for final determination :-

1.	Whether there is a prima facie case of Plaintiffs and/or defendants?
2.	Whether plaintiff and/or defendants proves that, balance of convenience is in their favour?
3.	Whether plaintiffs and/or defendants Prove that, if the injunction as prayed for is not granted in favour of them, they would suffer irreparable loss, which would not be compensated in

	terms of money ?
4.	What order ?

[5] Above mentioned points are decided as follows :-

1.	In Partly in Affirmative
2.	In Affirmative
3.	In Affirmative
4.	As per final order

**MY REASONS FOR ABOVE POINTS ARE DISCUSSED AS FOLLOWS:-**

[6] Heard learned advocates appearing on behalf of plaintiff, gone through the applications and evidences produced in supports of the application. Following are my findings on this application:

[7] It is a judicial concept of court, under O.39, R.1-2 of CPC., and discretionary power have been granted to the court, which should be exercised by the court in judicial manner, that too, considering the facts and circumstances of each case. Further, the parties should come before the court with clean hands. Further, this court believes that while deciding the injunction application, it is well settled principle of law that plaintiff must satisfy that he has a prima-facie case, that does not mean that the court should examine the merits of case closely and come to a

conclusion that plaintiff has a case in which he is likely to succeed. It is enough if plaintiff shows a fair question which can be raised at trial. At the same time, all these points are inter-connected with each other, therefore, they are discussed and decided together for the sake of convenience and brevity.

[7.1] Temporary injunction may be granted in following cases:

- (a) Where in 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) Where a defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors; or
- (c) Where a defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit; or
- (d) Where a defendant is about to commit a breach of contract, or other injury of any kind; or
- (e) Where a court is of opinion that the interest of justice is so requires.

[7.2] The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly

granted as it adversely affects the other side. The grant of injunction is in the nature of equitable relief, and the court has undoubtedly power to impose such terms and conditions as it thinks fit. Such conditions, however, must be reasonable so as not to make it impossible for the party to comply with the same and thereby virtually denying the relief which he would otherwise be ordinarily entitled to.

[8] **Point No. 1:**

[8.1] ***Whether there is a prima facie case of Plaintiffs and/or defendants?***

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, that there is an arguable case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of the prima facie right and infraction of such right is a condition precedent for grant of temporary injunction.

[8.2] On consideration of argument of plaintiff advocate and by looking at the record of the case, it has been

observed that the suit has been filed for getting declaration and perpetual injunction. Here at this stage, while deciding any issues of the said suit. This is necessary to observe carefully, whether there is a prima facie case of the party or not, instead of deciding the case of merits. Therefore it is not justifiable to decide any issue of law or issue of fact on merits of the case, while considering all the evidences produced in this case. Therefore, after perusal of the record of the case of both plaintiffs as well as defendants, I decide issue No. 1 as affirmative.

[9] **Point No. 2 & 3:**

- [9.1] ***Whether plaintiff and/or defendants proves that, balance of convenience is in their favour?***
- Whether plaintiffs and/or defendants Prove that, if the injunction as prayed for is not granted in favour of them, they would suffer irreparable loss, which would not be compensated in terms of money?***

The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience 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. The court while exercising discretion in granting or refusing injunction should exercise sound judicial discretion and should attempt to weigh substantial mischief or injury likely to be caused to the parties, if the injunction is refused, and compare it with that which is likely to be caused to the opposite party if the injunction is granted. If on weighing conflicting probabilities, the court is of the opinion that the balance of convenience is in favour of applicant, it would grant injunction, otherwise refuse to grant it. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable loss if the injunction as prayed 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. The expression irreparable loss doesn't mean that there should be no possibility of repairing the injury. It only means that the injury must be material one, i.e. which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exists no specific or fixed pecuniary standards for measuring damages. Here, both the parties have prayed for the same relief, hence it could be concluded that there is a balance of convenience in the favor of both the parties. And if the

injunction would not be granted to any or both the parties, there is a strong possibility to suffer irreparable loss to any/both the parties. Therefore, I decide issue no. 2 & 3 as partly affirmative.

[10] **Point No. 4:**

On the perusal of the record of the case, it is pertinent that, both the parties have claimed for interim injunction in the said disputed suit. Therefore, I decide issue No. 4 as per final order, hence; following order is passed in the interest of justice.

**ORDER**

1. It is hereby ordered that both plaintiffs and defendants shall maintain **Status Quo (existing condition)** of the said disputed land property of “**(i)** Block No. 62, Survey No. 74, 0-14-16, 5-31, **(ii)** Block No. 522, Survey No. 415/1/2, 0-65-76, 0-26-30, 0-92- 06, 18-12 **(iii)** Block No. 528, Survey No. 413/1/2/3, 0-27-72, 7- 42, **(iv)** Block No. 194, Survey No. 150/1, 151/2, 0-59-69, 11-12/41-98, **(v)** City survey No. 887 & 88 **(vi)** House No. 38 & 39” till the final decision of the suit.
2. No order as to costs.

Pronounced in open Court today on this 13th day of month of  
August 2021.

Date : 13/08/2021  
Place: Bardoli  
Judge

[ M. H. Makwana ]  
2nd Addl. Civil

Bardoli  
GJ 001523

---

**(TYPED BY: SELF)**