

Regular Civil Suit No.100/2015

Order under Exh. 5

1. Brief facts of the present application are: suit properties situated at village Chhitra vide block No.2, 51, 188 and house properties Nos.12 & 16 are of joint possession and undivided under Hindu Succession Act. Suit properties are ancestral in nature and plaintiff is a co-sharer in the suit properties. Entry No.500 of date 1-7-1971 also clears that Hindu Succession Act is applicable to the properties. On 22-12-1988 mutation entry No.774 was made regarding the properties of block Nos.2, 51, 80, 164 and 188. These properties are in joint ownership and possession of the parties. Plaintiff's name was illegally removed from the revenue record, while making the mutation entry No.774. When plaintiff asked for the partition, defendants refused it. Hence, by present interim injunction, plaintiff has asked for the relief that defendants be restrained from transferring the suit properties to any one and in any manner and also to not to make any such activity, so that the plaintiff's right gets minimize in any manner.

2. Defendants have not produced w.s. for the plaint. Hence, present suit is proceeded *ex-parte*.

3. Heard Ld. Advocate of plaintiff, perused the record and taken into consideration the legal provisions. Plaintiff has produced 9 documentary evidences at Exh.3. They are mainly;

- mark 3/1 is abstract of 7/12 & 8-A of block No.2 of suit property.
- mark 3/2 is abstract of 7/12 & 8-A of block No.51 of suit property.
- mark 3/3 is abstract of 7/12 & 8-A of block No.188 of suit property.
- mark 3/4 is assessment form of house No.12 & 16 of date 10-1-2013.
- marks 3/5 to 3/7 are mutation entries Nos.500, 774, 781 of dates 21-4-1971, 22-

12-1988 and 3-2-1989 respectively.

-- marks 3/8 & 3/9 are legal notice and its RPAD receipts.

4. By present application, plaintiff has asked for the relief that defendants be restrained from transferring the suit properties to any one and by any mean till the final disposal of the present suit and he has also asked for the relief that they should be ordered to not to carry any such act in the suit properties, so that his rights get minimize in the suit properties. Though duly served with notice, defendants have not appeared before the court to file their reply regarding the suit and the interim injunction application, hence, predecessor court ordered to proceed *ex parte* against them. At this stage, their conduct gives space for the presumption in favour of the plaintiff.

5. The documentary evidences produced at Exh.3 and specially at marks 3/5 to 3/7 *prima facie* prove that suit properties are ancestral in nature and if the suit properties are ancestral in nature, plaintiff has right in the suit properties. Defendants have not produced any evidence and hence, the exact situation is not available on record. But, it seems *prima facie* that plaintiff's right as class -I of schedule heir is there in the suit properties.

6. For any interim injunction application, it is required for the plaintiff to prove that, all the three essential ingredients are in his favour that means, he has to prove that he has *prima-facie* case. And looking to the facts and circumstances, it seems that plaintiff has *prima-facie* case. And he has produced enough evidences on record till yet, by which it can be believed that he has *prima- facie* case. The balance of convenience is also in his favour. The evidence produced till yet on record *prima-facie* prove this fact. His rights regarding ancestral properties are in question. Hence, he will have to suffer irreparable loss, if present application is not allowed partly regarding non transfer. No evidence regarding possession is produced on record. Hence, all the three ingredients in this aspect are not in the favour of the plaintiff at this stage.

7. Looking to the above discussion, this Court is of the view that, it is

required to allow present interim injunction application partly regarding the non-transfer and if it is not allowed, it will surely cause miscarriage of process of law and it will seriously prejudice the final judgment of this suit. Hence, this application deserves to be allowed partly.

8. In view of the above discussion, following order is passed under Exh.5;

:: O R D E R ::

This interim injunction application is hereby partly allowed.

Defendants are hereby ordered to not to transfer the suit properties of block Nos.2, 51, 188 and house Nos.12 & 16 situated at village Chhitra to any one and in any manner and defendants are also restrained to conduct any such act regarding the suit property that minimize plaintiff's right in the suit properties till the final judgment of this suit.

No order as to cost.

Pronounced in open Court on 13 April, 2017.

Bardoli.
Date: 13-4-2017

(Dr. Manjudevi Shardaprasad Pande)
Principal Sr. Civil Judge & ACJM,
Bardoli
U.I.Code-GJ00860