

IN THE COURT OF SH.DEEPAK DUTTA,ADD.CIVIL
JUDGE,TA.PALSANA, SURAT

RCS-11/2020

Ravinderbhai Vinodbhai Patel

.....Plaintiff

Vs

Jasabhai Ranabhai Humal & Ors

....Defendants

ORDER BELOW EXH-5

1.The present application has been filed by the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure along with the suit. In the present application the plaintiff has prayed that the defendant no 1 to 4 and other defendants or any other person shall not sell, mortgage, gift, transfer, assign or transfer in any manner or shall not cause any defect or deficiency in the suit properties and prohibit the defendants from interfering with the possession of the plaintiff. And shall not obstruct, hinder or deprive the possession of the plaintiff or shall not prevent the plaintiff from entering, using or carrying out agricultural work on the said land or shall not allow anyone to enter to the land of the plaintiff or not to cause any alteration in the revenue

record or any change in its authority or nature of the suit properties.

2. The brief facts of the case are that the plaintiff filed the suit against the defendants for declaration, permanent Injunction and Partitions. It is the case of the plaintiff that the defendant no.3 is the brother of the plaintiff and defendant no 4 is the Mother of the plaintiff. The plaintiff and the other defendants are related to each other. It is case of the plaintiff that the plaintiff has some share in the following suit properties:-

Sr.No	Village Name	Block No	Size
1.	Vasona	342	2-19-54
2.	Vasona	139 A(Original Block No.139)	0-22-94
3.	Vasona	50	0-44-41
4.	Vasona	573	1-55-80
5.	Soyani	262	2-69-77
6.	Soyani	261	0-24-28

3. It is the case of the plaintiff that father of the plaintiff during his lifetime had partitioned the following suit properties on 18.03.1998 in which the property block no 342 H.Sq.2-19-54, the 50%

(Fifty percent) share came in favour of the defendant no-5, defendant no-7, defendant no-9, defendant no.8 and 25% (Twenty Five percent) came in the favour of plaintiff and 25% (Twenty Five percent) came in favour of defendant no-10.

The property no-139A H.Sq.0-22-94, the 50% (Fifty percent) share of this property came in favour of the defendant no-10 and 50% (Fifty percent) came in favor of the plaintiff.

The property no-50, H.Sq 0-44-41 ,the 50% (Fifty percent) share of this property came in favour of the defendant no-10 and 50% (Fifty percent) came in favor of the plaintiff.further it is stated that the name of the defendant no 3 and defendant no-4 are used only for formality.

The property no-573, H.Sq 01-55-80, the 50% (Fifty percent) share of this property came in favour of the defendant no-10 and 50% (Fifty percent) came in favor of the plaintiff.

The property block no-262, H.Sq 02-69-77, came in the favour of the defendant no-11 and he became the full owner of the said property.

The property block no-261 and Rs.3,00,000/- (Rs Three Lakh) came in favour of the defendant no-3 and defendant no-4.

4.It is the case of the plaintiff that plaintiff and the defendant no -3 to 11 having their respective

possession and farming upon allotted properties. It is the case of the plaintiff that defendant no-3 has relinquished his share in respect of property Block no-50, Block no-139A and Block no-342 in favour of the plaintiff through release deed no-11746/2019 and 11745/2019 dated.31.07.2019. It is the case of the plaintiff that the plaintiff, defendant no-3 and defendant no-10 had relinquished their share in respect of property Block no-262 in favour of defendant no-11 through release deed no-5009/2009 dated 25/03/2019.

5. It is the case of the plaintiff that the defendant no-1 and 2 had befriended the defendant no-3 and made him addicted to alcohol. The defendant no-1 and 2 took the ID and photographs of the defendant no-3 and brought the defendant no-3 in abbreviated state before the palsana Sub Registrar office and defendant no-3 sold the property block no-262 to the defendant no- 1 through sale deed no-6629/2019 dated 18.04.2019 and also sold the property block no 573 to the defendant no-2 through registered sale deed no-6630/2019 dated 18.04.2019 without the consent of the other defendants.

6. The defendant no-5 to 9 appeared and filed the written statement marked as Exh-17 and defendant no-10 has filed the written statement along with counter claim marked as Exh-28. The defendant no-1

filed the reply to the present application along with the written statement as Exh-54 and denying the averments made in the present application. The defendant no-1 submitted that he had purchased the property block no-262, area consisting of H.Sq 0-29-97, legally with the consideration through registered sale deed no-6629 dated 18.04.2019 from the defendant no-3 and plaintiff has not come before this court with clean hands. The defendant no-2 has filed the written statement along with the reply of the present application as Exh-39. The defendant no-2 submitted that he purchased the property block no-573 from the defendant no-3, area consisting 0-25-86 through registered sale deed 6630/2019 dated 18.04.2019 and denied the averments of the present application. Hence, the present application is liable to be dismissed.

7. Having heard and pursued the written submission of both the parties and record the case carefully. The court normally applies the following test for deciding the present application:

- a. Whether the plaintiff has a prima facie case;
- b. Whether the balance of convenience lies in favour of the plaintiff;
- c. Whether the plaintiff would suffer an irreparable injury if his prayer for injunction is disallowed'

8. *Order 39 Rule 1 of the CPC (1)*. provides for the grant of temporary injunction -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 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 court may be order grant 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 or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit, until the disposal of the suit or until further orders.

9. On perusal of the case record, the present application and documents submitted along with suit. It appears from the record that the father of the plaintiff expired on 08.05.1998. And the partition agreement was made between plaintiff, defendant no-3, defendant no-4, and Bhikabhai

Kalidas dated-18.03.1995 Mark as 1/14 and they partitioned their share according to the agreement in respect of suit properties. Further it also appears from the record that the defendant no-3 has the right in the property block no-262 which is Marked as 1/12. It appears that defendant no-1 purchased the property block no-262 area consisting of H.Sq 0-29-97 from the defendant no-3 i.e his share in the property through registered sale deed 6629 dated 28.04.2019 which is Marked as 1/16. It also appears that defendant no-2 purchased the property block no-573 area consisting of H.Sq 0-25-96 from the defendant no-3 i.e. his share in the property through registered sale deed 6630 dated 28.04.2019 which is Marked as 1/17. It appears that the defendant no-3 only sold his share in the said properties to the defendant no-1 and defendant no.2. Thus,it is a matter of evidence and it can be decided by only recording of evidence. The possession of the suit properties are also with the plaintiff and others defendants except the defendant no-1 and defendant no-2.

10. Here, it is important to refer a provision of section-52 of the Transfer of Property Act: Section-52 says Transfer of property pending suit relating thereto: During the pendency in any Court having authority within the limits of India

excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose. Thus, it stipulates that during the pendency of any suit or proceeding in which any right to immovable property is, directly or specifically, in question, the property, which is the subject matter of such suit or proceeding cannot be transferred or otherwise dealt with, so as to affect the rights of any other party to such a suit or proceeding.

Hence, according to the said provision the plaintiff gets the protection. The plaintiff also failed to establish that the suit properties are in danger of being wasted or damaged or alienated or threatened to dispose of by the defendants. In view of the above discussion, the plaintiff has failed to satisfy the necessary ingredients for

grant of interim relief in his favour.

ORDER

The application filed by the plaintiff is disposed off as dismissed

The opinion expressed in this order shall not be construed as an expression of opinion on the merits of the matter by this court.

No Order as to costs

Date:14.06.2023
Place:Palsana

Deepak Dutta
Additional Civil Judge,
Palsana, Surat
GJ01685