

REGULAR CIVIL SUIT NO.: 03 OF 2023.

Shri M C Mehta,	Ld. Counsel for the Plaintiffs.
Shri R C Shah,	Ld. Counsel for Defendant Nos.: 1 to 3, and 9 to 11.
Shri N J Modi,	Ld. Counsel for Defendant Nos.: 4 to 8 and 12/1 to 12/3.
Ex-parte	Qua Defendant No.:10.

ORDER BELOW APPLICATION - EXH.: 5 - FOR INTERIM RELIEF.

1. The dispute involved in this suit has chequered history and is between family members and this suit is 2nd round of litigation in respect of suit lands/properties as enumerated and mentioned in Para 3/1 to 3/7 of the plaint situated within jurisdiction of this court in and around Vyara Taluka of Tapi District in the State of Gujarat in Indian Republic.
2. From the pleadings put forth by the Plaintiffs as well as documents on record [**Mark-3/33**] it appears that **Special Civil Suit No.: 05 of 2012** was filed by present Respondent No.:1 in this Court seeking relief of declaration and partition by meets and bound as well as for injunction against other parties of this suit. It further appears from documents [**Mark-3/34**] on record that as some sort of settlement came to be arrived at between some of the parties of that suit, Plaintiff of that suit in his own wisdom and discretion, after placing on record settlement so arrived at by them, has preferred to withdraw the suit as such above numbered suit came to be disposed of as withdrawn on 27.07.2022. As such above numbered suit came to be disposed of; however, present Plaintiffs though parties to said suit were not signatories of the settlement deed.
3. This suit is filed by the Plaintiffs seeking declaration and permanent injunction by invoking provisions of section 34 of the Specific Relief Act, 1963. In this suit Plaintiffs are inter alia claiming that, they have rights share and title in the suit properties and/or joint

possession in the suit lands/properties and declaration to the effect that, settlement arrived at in above numbered suit is not binding to them as they have not signed said agreement and same is illegal as well as null and void and further declare that Defendants have not acquired any right title or interest on the strength of said settlement - **Mark-3/34**. They are also seeking relief restraining Defendants and other persons acting on behalf of Defendants, from interfering in the joint possession over suit lands/properties and further restrain Defendants from using so called settlement for any legal purpose and/or mutating their names in revenue records of suit properties on the strength of said settlement deed - **Mark-3/34**.

4. By way of present application, Plaintiffs are seeking interim relief pending hearing and disposal of the suit, restraining Defendants from mutating their names in revenue records of the suit lands/properties as well as restraining them from disposing of suit lands/properties on the basis of the settlement deed - **Mark-3/34**.
5. The Defendants are duly served with summons of the suit as well as notice of present application. They have filed their appearances through their legal counsels and have contested the suit as well as present application, tooth and nail, by way of filing their written statements. Though Defendant No.:10 is duly served with summons as well as notice of present application she has failed to appear and/or file her appearance through legal counsel hence suit is ordered to be heard and decided ex-parte qua Defendant No.:10 by passing orders to that effect below application - **Exh.: 18** - on 07.02.2023.
6. I may add here that some of the Defendants have moved application - **Exh.: 23** - invoking provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint on the grounds of insufficient court fees as well as for want of cause of action. After hearing both sides, this court on 09.02.2024 has rejected said application. There is nothing on record to indicate that order dated:

09.02.2024 was challenged before higher forum, as such said order has attained finality.

7. The Defendant Nos.: 1 to 3 and 9 to 11 have filed their written statement at **Exh.: 40** wherein while denying entire pleadings put forth by the Plaintiffs, they have inter alia contended that suit is barred for want of necessary parties; as some of the parties in present suit were not parties in earlier suit/s. They have further contended that, when out of court settlement was arrived at between parties to erst while suit, present Plaintiff No.: 1 [who was Defendant No.:2 in that suit] was present in the court and his legal counsel has signed settlement deed - **Exh.: 420** of that suit [**Mark-3/34**] as such Plaintiff No.:1 was well aware about such settlement deed and on the strength of settlement as suit was withdrawn question of drawing decree does not arise at all; therefore pleadings to that effect is false and misleading. They have further contended that, as legal counsel of present Plaintiff has signed settlement deed; same is binding on them therefore no cause of action for filing suit has arisen. They have further contended that, as per settlement arrived at between parties in the earlier suit, in presence of their '**Guruji - Shri Damodar Sai**' each of the parties of that suit have received possession of the properties; however with mala fide intention of getting more share/rights in suit properties present suit is filed. They have further contended that, although allegations are made against them for mutating their names in revenue records of the suit lands/properties however no iota of evidence is placed on record in support of his pleading. They have further contended that, though Plaintiff claims possession as co-owner of property bearing City Survey Nos.: 1547, 1581 and 1582 and also claims to be paying municipal taxes of said property; however, in facts as per settlement said properties has come in the share of Defendant No.:4 therefore Plaintiffs have no right over aforesaid properties. They have also denied that properties bearing City Survey Nos.: 1545 and 1546 is in possession of Plaintiffs as according to these Defendants only 02 shops therein has come in the share of present Plaintiff No.:1

whereas other amenities therein are kept open for common use by other stakeholders and house properties as well as other shops in same building has come in the share of Shri Nirmalkumar Lalwani - now after his sad demise same is in possession of Defendant Nos.: 12/1 to 12/3. Similarly property bearing City Survey No.: 1390 though stands in the joint names of Plaintiff No.:1, Defendant No.: 1, 9 and deceased Defendant No.:12 and now Defendant Nos.: 12/1 to 12/3; however as per settlement said property has come in the share of Shri Nirmalkumar Lalwani as such settlement arrived at is implemented present suit is filed with malafide intention of getting more share from suit properties. Similarly though property bearing City Survey No.: 958 and house property bearing No.:2563 stands in the names of present Plaintiff No.:1, Defendant Nos.:1, 9 and 12 as per registered sale deed; however, as per settlement said property has come in the share of Shri Sukuram Lalwani [Defendant No.:9]and at present same is in his possession as such settlement arrived at is implemented present suit is filed with malafide intention of getting more share from suit properties.

8. In short according to these Defendants, although some of the suit properties may stand in the names of some of the parties to the suit; however, actual possession of said properties are as per settlement arrived at in the earlier suit viz. as per document at **Mark-3/34**; therefore present suit is devoid of any merits and same is liable to be dismissed with cost in their favour.
9. The Defendant Nos.: 4 to 8 and 12/1 to 12/3 have resisted the suit as well as present application by filing their written statement at **Exh. : 33**. The Defendant Nos.: 4 to 8 and 12/1 to 12/3 have filed their written statement at **Exh.: 33** wherein while denying entire pleadings put forth by the Plaintiffs, they have inter alia contended that suit is barred for want of necessary parties; they have further contended that, suit is barred by principles of res judicata as well as on the ground of suppression of material facts; they have stated that, there is no much dispute about relationships between parties. They have

denied fact that settlement deed was arrived at unilaterally. They have further stated as settlement was arrived at in presence of '**Guruji**' and Plaintiff No.:1 has given his oral ascent to the settlement; suit came to be withdrawn by the Plaintiff; without entering into other formalities of deleting Ms. Pyariben who had died prior to with drawl of the suit. They have denied other allegation as well as pleadings put forth by the Plaintiff in the plaint of the suit.

10. The Plaintiffs have filed their counter affidavit in respect of written statements of the contesting Defendants at Exh. Nos: 41 and 42 respectively.
11. The Plaintiffs have submitted their written arguments in support of their pleadings at **Exh.: 45** with list of citations; whereas Defendant Nos.: 1 to 3 and 9 to 11 have submitted their written argument at **Exh.: 50** and Defendant Nos.: 4 to 8 and 12/1 to 12/3 have submitted their written argument at **Exh.: 52**.
12. I have heard Ld. Counsels for the parties and has gone through documents placed on record by the contesting defendants and have given my thoughtful consideration to it.
13. As Plaintiffs are claiming interim relief, pending hearing and final disposal of the suit, in this application; as per settled principles governing grant of interim relief, in order to get interim relief, party seeking such interim relief has to prove that, there exist prima facie case in his/her favour, irreparable loss would be caused to him/her if such relief is not granted and balance of convenience is more in his/her favour rather than other side. Moreover, as per settled principles, party seeking such interim relief has to prima facie show that all these 03 factors are in his/her favour and lack of even any one factor would entitle her to such relief. It is also no more res ges tate that, party claiming such relief/s has to establish existence of such factors has to show it on

her own strength and cannot seek it on the basis of weakness of other side.

14. In the light of above settled position of law let me examine pleadings put forth by the Plaintiffs and examine whether they are able establish existence of all these three factors in their favour so as to entitle them for grant of interim relief till final disposal of the suit.

15. On going through record of the suit, it clearly appears that, there is no dispute between parties that Special Civil Suit No.: 05 of 2012 [Mark-3/33] was filed in this Court and Plaintiff No.:1 of this suit was present Defendant No.:1 in that suit and present other Plaintiffs were not parties to that suit. There is also no dispute about the fact that, said suit was disposed of as withdrawn on 27.07.2022 as per withdraw Purshish - **Exh.: 421 [Mark-3/35]** as mentioned in the order passed below Exh.: 1 of above numbered suit. There is also no dispute about the fact that settlement [Mark-3/34] was arrived at between parties of that suit. On bare perusal of settlement deed dated: 27.07.2022 [Mark-3/34] it is seen that, same is signed by only 07 parties to the suit as against 10 original parties to the suit and if legal heirs of deceased Defendant No.:1 is counted then in all 13 parties. It is clearly evident that, though settlement deed is arrived at between some of the parties to the suit, it was open for the Plaintiff of the suit to obtain decree against such parties as per provision contained in **Order 23 Rule 3** of the Code of Civil Procedure, 1908 wherein it is provided that suit can be compromised wholly or in part by way of settlement arrived at between parties to the suit; still however Plaintiff in his own discretion and wisdom has preferred to withdraw the suit. **Be it as it may be!** Fact remains that, present Plaintiff No.:1 who was Defendant No.:1 in that suit has not signed said settlement [Mark-3/34]. The contesting Defendants claim that present Plaintiff No.:1 was present and his legal counsel has signed settlement deed on his behalf; however, I fail to find his legal counsel's signature on it. On perusal of said document it is seen that, his legal counsel has not

signed settlement deed for and on behalf of his client in the body of the settlement deed; however his signature is found in the margin of that document together signatures of legal counsel of other parties. As such claim of the contesting Defendants that legal counsel of present Plaintiff No.:1 clearly appears to be far away from truth. The contesting Defendants have further contended that, present Plaintiff No.:1 in his capacity as Defendant No.:1 of that suit has orally consented for such settlement; however, there is no force of law in said contention and same cannot be accepted firstly on the count that, no compromise decree is obtained on the strength of said settlement and secondly his signature [as well as his legal counsel] is clearly on said settlement deed missing on said settlement deed. Even otherwise as per settled position of law as settled by Hon'ble Supreme Court of India in the case of Amro Devi & Ors. Vs. Julfi Ram [Deceased] Through LRs and Other [**SLP [Civil] No.: 14690 of 2015**] has observed and held as under on 15.07.2024:-

20. A plain reading of the above provision clearly provides that for a valid compromise in a suit there has to be a lawful agreement or compromise in writing and signed by the parties which would then require it to be proved to the satisfaction of the Court. In the present case there is no document in writing containing the terms of the agreement or compromise. In the absence of any document in writing, the question of the parties signing it does not arise. Even the question of proving such document to the satisfaction of the Court to be lawful, also did not arise. Thus, it cannot be said that the order dated 20.08.1984 was an order under Order XXIII Rule 3 CPC.

21. Once it is held that the order dated 20.08.1984 was not an order of compromise of suit under Order XXIII Rule 3 CPC the argument relating to applicability and bar under Order XXIII Rule 3A CPC would have no relevance at all.

22. Additionally, we must also note the case of **Som Dev v. Rati Ram** as presented by the appellants to clarify the

rigors of Order XXIII Rule 3 of CPC. In this case, it was clarified by this Court that after the amendment of Code of Civil Procedure in 1977, a compromise decree can be passed only on compliance with the requirements of Rule 3 of Order XXIII, otherwise it may not be possible to recognize the same as compromise decree. When a compromise is to be recorded and a decree is to be passed, Rule 3 of Order XXIII of the Code requires that the terms of **compromise should be reduced to writing and signed by the parties.**

23. In the present case, neither the compromise deed has been reduced to writing, nor it is recorded by the court. Mere statements of the parties before court about such said compromise, cannot satisfy the requirements of Order XXIII Rule 3 of the CPC. Therefore, the compromise decree is not valid. [**Emphasis mine**]

16. In the case on hand no compromise decree is passed in said suit; therefore, same cannot be acted upon and same is not at all binding to present Plaintiff No.:1 as his signature is missing on said deed. On going through order dated: 27.07.2022 passed below Exh.: 420 [**Mark-3/34**] of that suit, it is seen that there is no mention about presence of Defendant No.:2 of that suit; therefore also it is clear that present Plaintiff No.:1 was neither signatory to said settlement deed nor present at the time of execution of said deed. As such for want of his consent as well as signature on said deed; settlement arrived at between other parties to the suit cannot bind non signatory of said deed - present Plaintiff No.:1. As such claim of the Plaintiffs appears to be genuine and requires consideration and scrutiny by this court.
17. On going through the pleadings put forth by the Plaintiffs it is seen that, there is no iota of evidence to show that, in fact any of the Defendants are trying to use it for transferring any of the suit properties in their name by presenting it before competent authorities and there is no iota of evidence to show and establish that in fact any of the suit properties is transferred in favour any of the parties to the suit. Therefore, it clearly

appears that, claim of the Plaintiffs appears to be only apprehension and/or illusory and same is not real. Even otherwise from the documents on record as placed and relied upon by the Plaintiffs it is evident that, most of the suit properties stands in joint names of the parties to suit therefore, as per provisions contained in section 135-D of Gujarat Land Revenue Code, 1879 revenue authorities are duty bound to issue notice if any change is required to be effected in revenue record they are required to issue notice to all person/s likely to be affected by such transfer and statutorily wait for 30 days before certifying such change and same is certified only if no objection are received within that period and if any objection/s is/are received then same is considered and speaking orders are passed after hearing both sides. Therefore, apprehension of the Plaintiffs' clearly appears to be totally misconceived and same is without any backing of law.

18. As such though pleading of the Plaintiffs requires consideration however there is complete lack of existence of prima facie case in their favour.

19. So far as existence of balance of convenience is concerned on one hand Plaintiffs claim that, settlement deed is not acted upon and he is in possession of some of the suit properties since long and contesting Defendants are trying to disturb them; on the other hand contesting Defendants are contending suit is causeless and settlement is already arrived at and suit properties are in possession of concerned parties as per settlement deed; however, revenue records of the suit properties placed on record does not support the claim of the Defendants as such same cannot be believed and taken at par at this stage by this court as such without recording evidence in the suit; same cannot be decided by this court. As such balance of convenience also does not favour present Plaintiffs.

20. So far as irreparable loss is concerned same does not favour Plaintiffs as they are in possession of some of the suit properties and enjoying its benefits and other parties are also in possession of other properties and revenue

records of most of the suit properties are in joint names of the parties to the suit; therefore, they are not likely to suffer any loss much less irreparable loss.

21. As suit properties are not self acquired properties of the Plaintiffs and/or contesting Defendants but most of these properties are inherited by them, I am reminded of the following observations of Hon'ble Supreme Court in the case of **Budh Ram & Ors. v. Bansi & Ors.**[Civil Appeal No.6291 of 2010] Hon'ble Supreme Court of India has by order dated: 05.08.2010 held that **"every co-owner has a right to possession and enjoyment of each and every part of the property equal to that of other co-owners. Therefore, in theory, every co-owner has an interest in every infinitesimal portion of the subject matter; each has a right irrespective of the quantity of its interest, to be in possession of every part and parcel of the property jointly with others. A co-owner of a property owns every part of the composite property along with others and he cannot be held to be a fractional owner of the property unless partition takes place."**

22. Even otherwise from documents placed with List - **Exh.: 26** it is prima facie evident that, some of the parties have tried to interfere with settled possession of others and matter was reported to Vyara Police Station, on 02.02.2023 and preventive action under section 107 and 106(3) of Code of Criminal Procedure, 1973 is taken by the police authorities. As such without taking evidence in the matter, ownership and/or possession of each of the suit properties cannot be ascertained as such at this stage this court is duty bound to accept joint ownership and joint possession as per revenue record as all these properties prima facie appears to be ancestral properties purchased in the name/s of some of the parties as per situation and condition prevalent at the relevant time as family was one entity at the relevant time.

23. For the reasons assigned herein above, as Plaintiffs have failed to establish existence of all three factors necessary for grant of interim relief in their favour, they

are not entitled to any interim relief; hence, following order is passed:

-::: ORDER :::-

Application is rejected with no orders as to costs.

PRONOUNCED IN OPEN COURT ON THIS 22ND DAY OF JULY, 2024 AT TAPI @
VYARA.

[RAVICHANDRAN PERIYASWAMY DAVENDRA],
Principal Senior Civil Judge,
Tapi @ Vyara.