

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE [HON'BLE
SHRI R P DAVENDRA] TAPI @ VYARA.

REGULAR CIVIL SUIT NO.: 10 OF 2025.

Plaintiff: **Ms. Mitalben D/o.: Jivanbhai Koradia &
W/o.: Mukeshbhai Bhalani**

VERSUS

Defendants: 1. **Shri Sanjaybhai Jivanbhai Koradia**
2. **Shri Manishbhai Jivanbhai Koradia**

SUBJECT: SUIT FOR PARTITION, DECLARATION AND
PERMANENT INJUNCTION UNDER SECTION 6 OF
HINDU SUCCESSION ACT, 1956 AND SECTION 34
AND 37 OF SPECIFIC RELIEF ACT AS WELL FOR
CANCELLATION OF FAMILY ARRANGEMENT DEED
AND WILL.

APPEARANCES:-

Shri D D Andharia, Ld. Counsel for the Plaintiff.
Shri K S Pradhan, Ld. Counsel for Defendant No.: 1
Shri N S Pradhan, Ld. Counsel for Defendant No.: 2

ORDER BELOW APPLICATION - EXH.: 5 - FOR INTERIM RELIEF
UNDER ORDER 39 RULE 1 AND 2 OF THE CODE OF CIVIL
PROCEDURE, 1908.

-:~::~ J U D G E M E N T ~::~:-

1. The dispute involved in this suit is between siblings of late Shri Jivanbhai Koradia and late Ms. Shardaben. The only daughter - **Plaintiff** - of Shri Jivanbhai & Ms. Shardaben has filed suit against her

two brothers and sons - **Defendants** - of Shri Jivanbhai & Ms. Shardaben. As such sister has filed suit against her brothers claiming right and share, only in respect of properties situated within territorial jurisdiction of this court, of her parents.

2. The dispute is in respect of 02 properties as enumerated in Para 4 of plaint of the suit as well as present application. The 1st property is residential duplex bungalow situated at Vyara in which her father is having 1/3rd share and 2/3rd share belongs to Defendants as this property is purchased by father of the parties together with present Defendants with equal right and share and such she is claiming 1/3rd share from 1/3rd share of her father; whereas 2nd property is also residential property; from this property she is claiming 1/3 share in said property as said property is purchased by her parents. The suit properties are more particularly described and placed on record by **Exh.: 6** and both suit properties are given to 02 distinct numbers. As such property number 1 shall herein after be referred to as '**Ram Kabir**' property and property number 2 shall be referred to as '**property of parents**' for the sake of convenience.

3. The Plaintiff claims that after death of her parents, she has been pursuing with her brothers - Defendants - for getting her right and share in

aforesaid properties and initially they were co-operating with her and assured her that she will get her right and share as per law and further informed her that they have initiated process for getting her name mutated in revenue records of aforesaid properties as well as other property situated else belonging to her father.

4. The Plaintiff further claims that as she is not residing in India; she believed version of Defendants as they were also her brothers; therefore, she did not initiate any action independently. She claims that, her parents were living/residing with her during last days of their life and for taking care of her parents she has also left her job as such she has discharged her duties towards her parents.

5. The Plaintiff further claims that after death of her mother - Ms. Shardaben - she had filed petition being '**Citation on petition for formal adjudication at Commonwealth of Massachusetts the Trial Court Probate and Family Court**' being Docket No.: MI22P2465EA. In sad proceedings present Defendants had filed their appearance and initially filed their objection; however subsequently filed affidavit relinquishing their rights; as such said proceeding was allowed on 25.08.2022. The Plaintiff further claims that, these facts are suppressed by Defendants before Government

Officials as well as before Court and quasi judicial authorities in India.

6. The Plaintiff further claims that, she was in touch and discussing regarding mutating her name in revenue records of properties of her parents and she was informed that Defendant No.:1 is pursuing this issue. The Plaintiff states that, their father was holding land in Junagadh District and in revenue records of said land; names of all the parties to this suit is mutated and entry number 3443 is also duly certified by competent revenue authority and this was in accordance with agreement with Defendants after death of their father.

7. The Plaintiff further claims that; still however Defendant No.:2 challenged aforesaid entry number 3443 by filing appeal number 46/2023 in the Court of Dy. Collector, Vanthli and obtained orders on 10.11.2023 in his favour. This order dated: 10.11.2023 came to be challenged by Defendant No.:1 by filing appeal/revision number 17 of 2024 before District Collector, Junagadh and first notice of these proceedings were served on her 27.02.2024; and only on service of this notice she came to know about all these proceedings. On return to India she applied on 22.10.2024 for obtaining copies of these proceedings and received copies on 18.11.2024; thereafter she came to know that order is passed on

22.08.2024 by District Collector, Junagadh. On receiving copies she was shocked to know that after death of their father; Defendant No.: 2 has produced on record WILL of their father as well as family settlement deed before revenue authorities and on the basis of this deed as well WILL; Defendant No.: has claimed right over properties of their father; hence, present suit claiming following reliefs:

૧. દાવા અરજી શેડ્યુલમાંજણાવેલ મીલકતો અમો વાદીનોહિન્દુ વારસાધારાની જોગવાઈઓમુજબ ગુજ. જીવણભાઈઅંબાવીભાઈ કોરડીયા તથા ગુજ. શારદાબેન જીવણભાઈકોરડીયા ની સ્થાવર માં ત્રીજા (૩) ભાગનો હકક, હીત, હિસ્સો થાય છે તેવુંવિજ્ઞાપન અમો વાદીની તરફેણમાંકરી આપવા હુકમ ફરમાવવા નમ્રઅરજ છે.

૨. દાવા અરજી શેડ્યુલ માંજણાવેલ મીલકતો તેમજ ગુજ. જીવનભાઈ અંબાવિભાઈકોરડીયા તથા ગુજ. શારદાબેનજીવણભાઈ કોરડીયા ની જે કોઈસ્થાવર મીલકતો હોય તે ગુજ. જીવનભાઈ અંબાવીભાઈકોરડીયા નું તા. ૦૫/૦૭/૨૦૦૪નાં નોટોરાઈઝડ વીલ તથા ગુજ. જીવનભાઈ અંબાવિભાઈકોરડીયા તથા ગુજ. શારદાબેનજીવનભાઈ કોરડીયા નું નોટોરાઈઝડકૌટુંબીક સમજૂતી લેખ તા. ૨૦/૦૯/૨૦૦૩નાં આધારે આ કામના પ્રતિવાદીનં-૧ અને ૨ નાં જાતેના જાતે, કે તેનાપ્રતીનીધી, એજન્ટો, સગા સબંધીઓ, મળતીયાઓકે અન્ય કોઈ વ્યક્તીઓ સદરહુમીલકત કોઈ પણને કોઈ પણ પ્રકારેવેચાણ, બક્ષીસ, વ્યહવાર, વહીવટ, ટ્રાન્સફર, એસાઈનકરે કરાવે નહી તેવો કાયમી મનાઈહુકમ પ્રતિવાદી વિરુદ્ધફરમાવવા નમ્ર અરજ છે.

૩. દાવાઅરજી શેડયુલ માં જણાવેલ મીલકતોતેમજ ગુજ. જીવનભાઈઅંબાવીભાઈ કોરડીયા તથા ગુજ. શારદાબેન જીવણભાઈકોરડીયા ની જે કોઈ સ્થાવરમીલકતો હોય તેની સ્થળ સ્થિતીમાં પ્રતિવાદી જાતે અથવા તેનાએજન્ટ, મુખત્યારકે કોઈ પણ વ્યક્તી કોઈ પણ દ્વારાકોઈ પણ પ્રકારનો ફેરફાર કરેકરાવે નહી તેવો પ્રતિવાદીઓવિરૂધ્ધ આદેશાત્મક હુકમ ફરમાવાનમ્ર અરજ છે.

૪. દાવાઅરજી પારા-૪ તથારજી રાખેલ શેડયુલ માં જણાવેલમીલકત સંબંધે ગુજ. જીવણભાઈઅંબાવીભાઈ કોરડીયા નું તા. ૦૫/૦૭/૨૦૦૪નું નોટોરાઈઝડ વીલ તથા ગુજ. જીવણભાઈ અંબાવીભાઈકોરડીયા તથા ગુજ. શારદાબેનજીવણભાઈ કોરડીયા નું નોટોરાઈઝડકૌટુંબિક સમજૂતી લેખ તા. ૨૦/૦૯/૨૦૦૩નો કાયદા મુજબનો ન હોય રદબાતલજાહેર કરવા તથા ગુજ. જીવનભાઈઅંબાવીભાઈ કોરડીયા નું તા. ૦૫/૦૭/૨૦૦૪નું નોટોરાઈઝડ વીલ રદ કરી તેઅંગેનુ જાહેરનાંમુ પ્રસીધ્ધકરાવવા હુકમ ફરમાવવા અરજ છે

૫. ગુજ. જીવણભાઈઅંબાવીભાઈ કોરડીયા નું તા. ૦૫/૦૭/૨૦૦૪નું નોટોરાઈઝડ વીલ તથા ગુજ. જીવણભાઈ અંબાવીભાઈકોરડીયા તથા ગુજ. શારદાબેનજીવણભાઈ કોરડીયા નું નોટોરાઈઝડકૌટુંબિક સમજૂતી લેખ તા. ૨૦/૦૯/૨૦૦૩નો કાયદા મુજબનો ન હોય તથાસદરહું ઉભા કરેલા દસ્તાવેજોઅમો વાદીને બંધન કરતા નથીતેવું પ્રતિવાદીઓ વિરૂધ્ધવિજ્ઞાપન તથા આદેશાત્મ હુકમફરમાવવા નમ્ર અરજ છે, તથા

૬. ગુજ. જીવણભાઈઅંબાવીભાઈ કોરડીયા નું તા. ૦૫/૦૭/૨૦૦૪નું નોટોરાઈઝડ વીલ તથા ગુજ. જીવણભાઈ અંબાવીભાઈકોરડીયા તથા ગુજ. શારદાબેનજીવણભાઈ કોરડીયા નું નોટોરાઈઝડકૌટુંબિક સમજૂતી લેખ તા.

૨૦/૦૯/૨૦૦૩આ કામનાં પ્રતિવાદી નં-૧અને ૨ નાં જાતે, કેતેના પ્રતીનીધી, એજન્ટો, સગા સબંધીઓ, મળતીયાઓકે અન્ય કોઈ વ્યક્તીઓઉપયોગકરે કરાવે નહી તેવો કાયમી મનાઈહુકમ પ્રતિવાદી વિરુધ્ધફરમાવવા અરજ છે, તથા

૭. અમારા પીતા ગુજ. જીવણભાઈ અંબાવીભાઈકોરડીયા ની દાવામાં જણાવેલતેમજ જે કોઈ મીલકતો મળી આવેતેમાં અમો વાદીનાં હિન્દુવારસાધારા મુજબ નાં હકક, હિસ્સા વાળી મીલકતનુંપાર્ટીશન કરી આપવા હુકમ ફરમાવવાઅરજ છે.

૮. આદાવાનું ખર્ચ પ્રતીવાદીનાંઓપાસેથી અપાવવા નમ્ર અરજ છે.

૯. આ દાવાને અનુરૂપ ન્યાયનાહિતમાં અપાવી શકાય તથા યોગ્યલાગતી હરકોઈ દાદ કે દાદો અપાવવાનમ્ર અરજ છે.

8. By way of present application, she is claiming interim relief pending final hearing and final of the suit and has sought following reliefs:

૧. દાવા અરજી શેડયુલ માંજણાવેલ મીલકતો તેમજ ગુજ. જીવનભાઈ અંબાવીભાઈકોરડીયા તથા ગુજ. શારદાબેનજીવણભાઈ કોરડીયા ની જે કોઈસ્થાવર મીલકતો હોય તે ગુજ. જીવનભાઈ અંબાવીભાઈકોરડીયા નું તા. ૦૫/૦૭/૨૦૦૪નાં નોટોરાઈઝડ વીલ તથા ગુજ. જીવનભાઈ અંબાવીભાઈકોરડીયા તથા ગુજ. શારદાબેનજીવનભાઈ કોરડીયા નું નોટોરાઈઝડકૌટુંબીક સમજૂતી લેખ તા. ૨૦/૦૯/૨૦૦૩નાં આધારે આ કામના પ્રતિવાદીનં-૧ અને ૨ નાં જાતેના જાતે, કે તેનાપ્રતીનીધી, એજન્ટો, સગા

સબંધીઓ, મળતીયાઓકે અન્ય કોઈ વ્યક્તીઓ સદરહુમીલકત કોઈ પણને કોઈ પણ પ્રકારેવેચાણ, બક્ષીસ, વ્યહવાર, વહીવટ, ટ્રાન્સફર, એસાઈન, કે મીલકતનાં નેચરમાંકોઈ પણ પ્રકારે ફેરફાર કરેકરાવે નહી તેવો દાવાનાં આખરીનીકાલ સુધી મનાઈ હુકમ પ્રતિવાદીવિરુધ્ધ ફરમાવવા નમ્ર અરજછે.

૨. ગુજ. જીવણભાઈ અંબાવીભાઈકોરડીયા નું તા. ૦૫/૦૭/૨૦૦૪નું નોટોરાઈઝડ વીલ તથા ગુજ. જીવણભાઈ અંબાવીભાઈકોરડીયા તથા ગુજ. શારદાબેનજીવણભાઈ કોરડીયા નું નોટોરાઈઝડકૌટુંબીક સમજૂતી લેખ તા. ૨૦/૦૯/૨૦૦૩અસલ આ કામનાં પ્રતિવાદી નં-૨નામ.કોર્ટ સમક્ષરજુ કરે તેમજ વીલ અને કૌટુંબીકસમજૂતીનો લેખ નો પ્રતિવાદીનં-૨ નાં જાતે કેકે તેના પ્રતીનીધી, એજન્ટો, સગા સબંધીઓ, મળતીયાઓકે અન્ય કોઈ રીતે દાવાનાં આખરીનીકાલ સુધી ઉપયોગ કરે, કરાવેનહી તેવો મનાઈ હુકમ પ્રતિવાદીવિરુધ્ધ ફરમાવવા નમ્ર અરજછે.

૩. અમારીઅરજીને અનુરૂપ ન્યાયના હિતમાંઅપાવી શકાય તથા યોગ્ય લાગતીહરકોઈ દાદ કે દાદો અપાવવા નમ્રઅરજ છે.

9. On service of summons of the suit as well as notice of present application; Defendants have filed their appearance through their legal counsels and have resisted claim of the Plaintiff by filing their common written statements. The Defendant No.:1 has filed his written statement - **Exh.: 17** - wherein he has inter alia contended that as suit is false and vexatious same is liable to be dismissed. He has further contended that it appears Plaintiff is not aware of his

address as he is residing at House No.: D-11 and not A-11 in Ram Kabir Society, Vyara; therefore he claims that Plaintiff has not come with true and correct facts hence suit is not maintainable. He has however admitted relationship between parties as well as suit properties and also genealogical chart placed on record relied upon by Plaintiff.

10. The Defendant No.:1 has contended that he is in possession '**Ram Kabir**' property since last 25 years and he is managing its affairs.

11. He has however denied fact that their parents were residing with Plaintiffs during their last days of their life and for taking care and looking after her parents she had left her job. He has further contended due to accidental death of their mother, Plaintiff has received compensation towards that accidental death; as such he also has right and share from compensation received by Plaintiff.

12. He has further contended that, parties have not entered into any compromise either in writing and/or orally in respect of any property and he has not received any notice dated: 01.03.2023 allegedly issued by Shri Ramniklal Hirpara. He has further contended that against alleged WILL as well as family settlement he has taken objections and has also issued public

notice in daily newspapers; as such to that extent he is in agreement with pleadings put forth by Plaintiff.

13. He has further contended that, at the time of marriage of Plaintiff her share from suit property as well as things have been given to her; she does not have any right in the suit properties. He has also contended that this court has no jurisdiction to hear this suit.

14. He has also contended that suit is not maintainable for want of proper court fees, and on the ground of limitation as well as for want of proper and necessary parties. As such according to him, she is not entitled to any of the reliefs claimed in this suit and as she has received huge amount towards compensation on account of accidental death of their mother; therefore he is entitled to receive share from compensation amount from Plaintiff.

15. Per contra Defendant No.:2 has in his written statement - **Exh.: 22** - has inter alia contended that, as Plaintiff has no right and share in the suit properties she is not entitled to file this suit and claim any relief; moreover no cause of action for filing this suit has arisen and entire suit is based on false and incorrect pleadings.

16. He has further contended that suit is barred on the grounds of delay and laches as well as limitation and is suit is filed with oblique motives as well as with malafide intentions. He has also contended that, suit is filed by suppressing material facts and she has not come with clean hands. He has further contended that, suit is even otherwise barred on the ground of non joinder of party as well as misjoinder of party as well as on the principles of estoppels. He has further contended that even other suit is barred under provisions of Transfer of Property Act; therefore also suit is liable to be dismissed.

17. He has further contended that, suit is liable to be dismissed as same is not properly valued and proper court fees is not paid and is filed on the basis of surmises and conjunctures.

18. He has admitted relationship between parties as well as suit properties and genealogical chart placed on record by the Plaintiff.

19. He has further contended that although there is no dispute about existence as well as descriptions of the suit lands however he has denied fact and claim of the Plaintiff that she has have right and share in the suit properties.

20. He has further contended that, so far as '**Ram Kabir**' property is concerned same is purchased by Defendants along with their father from one Babubhai Motibhai by virtue of registered sale deed number 237 and on the basis of same; their names are mutated in city survey records at Sr. No.: 179. Moreover, subsequently family arrangement was made between Defendants and their father on 20.09.2003 and same was executed before Notary Public. As per said agreement, Defendant No.:1 has foregone his right from aforesaid property in favour of Defendant No.:2. Moreover, in order to avoid any complication in respect of suit properties, their father - Shri Jivanbhai Ambavibhai Koradia - had executed WILL and same executed before Notary Public on 05.07.2004. As per WILL executed by their father, his share in property after his death shall vest in his wife - Ms. Shardaben Jivanbhai Koradia - and in case she is not alive then same shall vest in Defendant No.:2.

21. So far as '**property of parents**' is concerned, it is purchased by their parents in their names. This property is purchased from one Shri Amrutlal Nathubhai Parmar by virtue of registered sale deed number 245 and on the basis of this sale deed, names of their parents came to be mutated in city survey records vide entry 167.

22. He has further stated that, as per family arrangement made between Defendants as well as their parents, family arrangement came to be made and executed on 20.09.2003 before Notary Public. As per family arrangement dated: 20.09.2003, Defendant No.:1 as well as their parents have relinquished and foregone their right from this property in favour of Defendant No.:2. Still however, in order to avoid any complication in respect of suit properties, their father - Shri Jivanbhai Ambavibhai Koradia - had executed WILL and same executed before Notary Public on 05.07.2004. As per WILL executed by their father, his share in property after his death shall vest in his wife - Ms. Shardaben Jivanbhai Koradia - and in case she is not alive then same shall vest in Defendant No.:2. As per this family arrangement, Defendant No.:2 has been using suit properties and same is known to one and all as well as other parties to the suit.

23. He has further contended that, as he is in possession of suit properties as per family arrangement; still however Plaintiff and Defendant No.:1 in collusion with each other have, behind back of Defendant No.:2, applied to city survey authority for mutating their names in city survey records and accordingly mutation entry number 8347 however statutory notice as required under section 135-D of Bombay Land Revenue Code, 1879 is not served to him as

deliberately his incorrect address was mentioned and on the said notice false signature of Defendant No.:2 is made; as such names of legal heirs came to be mutated in city survey records. He has further contended that, Plaintiff and Defendant No.:1 are fully aware of the fact that, they have no right, share or interest in the suit properties; still however they have in collusion with each others have illegally got their names mutated in revenue records of suit properties.

24. He has further stated that so far as proceedings in USA Court is concerned; only half truth is placed on record as he has only signed on assent form for representing Plaintiff as such he has not filed any affidavit in trial court in USA. He has also stated that, at the time of her marriage he as well his father has extended helping hands to her and she has been given her right at the time of her marriage. Moreover, Plaintiff was running subway restaurant in USA. In 2001 when she [Plaintiff] was pregnant, for taking care and looking after her, she had invited their mother to USA. He has further stated that, due to presence of their mother, Plaintiff was regularly attending her store and their mother was looking after household work as well as taking care of her son. Moreover, their mother was also made to work in her sandwich store and at that time their father was himself taking care of him; as

such she invited their mother for her personal gain/benefit and was made to work as maid in USA.

25. He has further contended that, Plaintiff as well as her husband came to India and stayed at Mumbai from 2011 to 2015 and were running business in the name and style of '**Saals Pizza**' and during that period their parents were staying alone in USA and she did not go to USA during medical treatment and/or surgery of their parent and did not care to take care of them. Moreover during 2017 to 2021 they used their parents as their personal care assistants and earned thousand of dollars out of their labour; they have hidden this fact from USA government and kept that government also in dark.

26. He has further stated that as their mother has passed away for heavenly abode due to accident; therefore for claiming compensation he has signed on ascent form in proceedings filed in USA Court so as to enable present Plaintiff to represent him in said proceeding; as such he has denied having filed any affidavit in USA Court.

27. He has therefore inter alia while denying other facts put forth by the Plaintiff has requested this court to dismiss suit and consequentially has requested this court to reject present application with exemplary/compensatory costs.

28. I have heard Ld. Counsel for the Plaintiffs as well as gone through record of the suit as well as written submission placed on record at **Exh.: 26** by Plaintiff and by Defendant No.:1 at **Exh.: 30** and by Defendant No.: 2 at **Exh.: 31**.

29. As per settled principles of law governing provisions of Order 39 and Rules framed there under in Code of Civil Procedure, 1908 for grant of interim relief, pending hearing and final disposal of suit, party claiming such relief must establish existence of prima facie case, balance of convenience and irreparable loss in their favour and they must prove existence of all such factors on their own strength and cannot take advantage of weakness of other side. Moreover, as grant of such relief is equitable relief party claiming such right must come with correct facts and with clean hands. If party claiming such relief fails to prove or establish existence of any such factor in their favour then such relief cannot be granted in their favour. It is also now no more res gestae that even if any of the party is able to prove existence of all three ingredients, then also, court can refuse to grant interim relief, if it comes on record that any of the party/ies does not come with clean hand/s and/or has/have suppressed material facts as it is settled position of law that court of law are aware about law however not about facts therefore it is

incumbent upon parties to come not only with full and correct facts but not suppress any material facts which may be relevant for just adjudication of the lis involved in the matter.

30. I have heard Ld. Counsels for the parties as well as have gone through written arguments submitted by Plaintiff at **Exh.: 25** and by Defendant No.:1 at **Exh.: 30** and by Defendant No.: 2 at **Exh.: 31**.

31. On going through pleadings put forth by the parties; it clearly transpires there is no dispute about fact that, Plaintiff is only sister of both Defendants who happen to be her brothers. There is also no dispute about fact that, their parents have passed away for heavenly abode and both of them have passed away at USA in 2021 [See: **Mark-3/1 and 3/2**]. There is also no dispute about fact that, suit properties are self acquired properties of their father. Out of which one property is acquired in the name of their parents and other property together with Defendants; as such so far as 01 property is concerned, Plaintiff claims that she is having 1/3rd share in whole property and in other property she is having 1/3rd share out of 1/3rd share of her father.

32. There is complete disagreement between parties so far as his father dying intestate as well as family arrangement during life time of his father. On one hand

one of the Defendant claims that their father has made family arrangement however in order to avoid any further complication in future, he has also executed WILL in respect of suit properties.

33. In the light of above facts and circumstances, let me examine pleadings put forth by the Plaintiff in the light of the proof placed on record and relied upon by her in support of her pleadings; since at this stage it is incumbent upon her to prove existence of all 03 factors viz. existence of prima facie case, balance of convenience and irreparable loss in her favour, for being eligible for getting interim relief, pending hearing and final disposal of suit.

34. The pleading of the Plaintiff to the effect that '**Ram Kabir Property**' is purchased by her father together with her brothers - Defendants - gets support from document at **Mark-3/3** by virtue of registered sale deed dated: 31.03.1992 as such there is no doubt about fact that this property is self acquired property qua their father is concerned and so far as 2nd property viz. property of parents - is concerned it is seen from document at **Mark-3/5** that said property is purchased by their parents by virtue of registered sale deed dated: 10.04.2001. As such pleadings of the Plaintiff to the effect that, suit properties are self acquired property of her parents.

35. From the pleadings of the Plaintiff in the light of document at **Mark-3/12** it is evident that on 20.09.2003 during life time of parents of parties; they have executed and entered into family agreement amongst themselves and same is signed by parents of the parties together with Defendants in presence of witnesses before Notary public on 20.09.2023. Although Plaintiff claims that, no such family arrangement has been made/executed by her parents and she came to know only when she obtained copy thereof recently on 18.11.2024 however there is nothing on record to prima facie show and establish this fact, as no seal or signature of any government or semi-government or even quasi judicial office or official is found on family agreement allegedly obtained by Plaintiff from revenue authority in 2024 and therefore her pleadings on this count prima facie appears to be far away from truth and is put forth and pleaded solely for bringing this suit within limitation.

36. Moreover, Plaintiff claims that Defendants have filed consent affidavit in petition filed by her in USA Court; however she has failed to place on record so called affidavit filed by her brothers/Defendants of this therefore, same also appears to be far away from truth and nothing but farce.

37. In view of above facts and circumstances as emerging on record; pleadings of the Plaintiff and proof do not appears to be going together and are not in consonance with each other; as such, she has failed to establish and show existence of any prima facie case in her favour. Moreover it is an admitted position by Plaintiff that she is not residing in India; therefore question of her being in actual possession of the suit land cannot arise at all and even as per her pleadings in one of the suit property present Defendants are owners to the tune and extent of 66.66% of the property therefore at the most she has 0.33 % out 33.33 % of the property; that too if she has able to establish and prove that no such family agreement [**Mark-3/12**] dated: 20.09.2003 was executed by her parents during their life time. So far this property is concerned from document placed on record in the form of property card maintained by City Survey Office, Vyara it is seen that, as on 01.03.2024 [**Mark-23/1**] still that property stands in the name of original purchasers of this property - her father and brothers/Defendants; as such even after death of her parents in 2021 as such there is no change of title for more than 04 years; as such there is nothing on record to show and establish that there is imminent danger to title of this property calling for any interference of this court to protect title of suit property to avoid multiplicity of

proceedings. So far as other property is concerned same stands only in the name of Defendant No.2 as on 01.03.2024 [**Mark-23/2**] in city survey record.

38. Moreover from the WILL [**Mark-3/11**] dated: 05.07.2004 also it is seen that, during life time of Shri Jivanbhai Koradia he has made necessary arrangement regarding his property. On prima facie looking at this document it is clear that it does not bear any seal or signature of any government or semi-government therefore it cannot be said that she has obtained it recently only; as such, pleadings on this count also appears to be made for bringing suit within limitation.

39. In view of above facts and circumstances as well as documents on record; until and unless evidence is led in the suit and during that process, if Plaintiff is able to prove her case then only she would be entitled to some right and share in suit properties; however as of now, it prima facie appears that she is not having any right or share in suit properties and suit prima facie appears to be either filed belatedly and/or is time barred. As such balance of convenience also prima facie does not appears to be favouring cause and case put forth by the Plaintiff and so far as question of irreparable loss is concerned; in my opinion she is not likely to suffer any loss as suit properties are

immoveable property and if at all any change in title of the properties would take place then it can be done only by way of registered deed as such if she is ultimately above to establish her right and share in suit properties then she would be entitled to receive her share, if any, from the suit property, as such loss if any can be evaluated in terms of money or money equivalent. More over there is nothing on record to show or even indicate that, Defendant/s is/are trying to dispose of suit properties.

40. For the reasons assigned herein above, following final order is passed:

::: O R D E R :::

Application is rejected with no orders as to costs.

PRONOUNCED IN OPEN COURT ON THIS 29TH DAY OF NOVEMBER, 2025 AT TAPI @ VYARA.

[RAVICHANDRAN PERIYASWAMY DAVENDRA],
PRINCIPAL SENIOR CIVIL JUDGE,
TAPI @ VYARA [GJ-00459]