

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

REGULAR CIVIL SUIT NO.: 29 OF 2023.

**Plaintiffs: Shri Kantibhai Thakorebhai Chauhan & 20
Ors.,**

VERSUS

Defendant: Ms. Ranguben Wd/o.: Gangjibhai Gamit.

SUBJECT: SUIT FOR DECLARATION AND PERMANENT
INJUNCTION UNDER SECTION 31 37 38 OF
SPECIFIC RELIEF ACT, 1963 AND OTHER
ANCILLIARY RELIEFS.
VALUED AT RS.4,50,000=00.

APPEARANCES:

Shri J G Raval,
Defendant

Ld. Counsel for Plaintiffs.
SERVED

ORDER BELOW APPLICATION - EXH.: 5 - FOR INTERIM RELIEF
UNDER ORDER 39 RULE 1 AND 2 READ WITH SECTION 151 OF CODE
OF CIVIL PROCEDURE, 1908.

::::: JUDGEMENT :::::

1. The dispute involved in this suit is in respect of following parcels of old tenure land situated within local limits of Village: Musa, Tk.: Vyara, District: Tapi of Gujarat State in Republic of India [Herein after referred to as '**Suit Land**' for the sake of brevity and convenience]:

Revenue Account No.	Original Block No.	Old Block/S. No.	New Block/S. No.	Area [In Sq. Meters]	Assessment value [In Rs.]
123	17/7	31	37	1157	00=60
123	17/4+17/5+17/1	33	39	6466	04=78
123	17/10	39	45	2556	01=29
123	153/1	205	224	1131	01=85

2. The Plaintiffs claims that, suit land originally belonged to their ancestors Late Shri Parhubhai Kalabhai and his name was found in revenue records of suit land till 1951-52 as owner and possessor. They claim that, Shri Thakorebhai Prabhubhai - father of Plaintiff Nos.: 1 to 3 - has passed away for heavenly abode on 27.02.2010 at Vyara; as such they have been arrayed as Plaintiffs in the suit as legal heir of late Shri Thakorebhai Prabhubhai.

3. They further claim that, Plaintiff Nos.: 1 and 4 to 21 are residing at England since last 40-50 years and rest of the Plaintiffs are residing at the address shown in the cause title of the plaint; more over all the Plaintiffs have given power of attorney to Shri Hirenkumar Kiritbhai Chauhan - son of Plaintiff No.: 3 for filing as well as contesting this suit.

4. It is their claim that, they have not entrusted suit land to present Defendant and/or her husband - Late Shri Gangjibhai - in any form or manner; as such

some of the Plaintiffs who are residing at Vyara were taking care and looking after affairs of suit land and cultivating it and also paying revenue and other leviabale cess on suit land.

5. They further claim that taking advantage of the fact that some of the Plaintiffs are residing abroad; present Defendant in connivance with and in collusion with some anti social elements as well as land mafias; have instituted tenancy case number 06 of 2000 for declaring her as well as her husband and her family members are tenants of suit land. In said proceedings; the then Mamlatdar, Vyara without issuing any notice to them and without following due process of law has declared her as tenant of the suit land on 27.03.2003; therefore according to them said order is null and void.

6. The Order dated: 27.03.2003 was taken in review by Dy. Collector, Vyara; however, by order dated: 03.03.2005 [In fact it is 10.08.2005 - **See Mark-3/31**] Dy. Collector has declared that order dated: 27.03.2003 passed by Mamlatdar is just and proper; therefore according to them order dated: 03.03.2005 is also nullity.

7. They further claim, effect of order dated: 27.03.2023 is given in revenue records vide mutation entry number 1077 [**Mark-3/30**]; however, even at the time of mutating name of Defendant in revenue no

notice as required under section 135-D of Land Revenue Code is issued to them; still however said entry is certified by revenue authority. On going through this entry it is seen that, same is certified after verifying order of Mamlatdar, Vyara; as such in my opinion as this entry is mutated for giving effect of order passed in revenue proceedings; as such there is no necessity to issue notice to any persons/parties, since no rights are created or extinguished in favour of any person or party.

8. They further claim that, once again on 28.10.2013 applied to revenue authority for fixing purchase price of suit land as provided for under section 32-G; and said application was registered as **case number 22/2014**. When aforesaid proceedings were going on; Plaintiff No.:1 happened to visit Vyara and he came to know about mutation entry number 1077; hence he filed **RTS Appeal No.: 199 of 2016** for expunging mutation entry number 1077; however his appeal came to be rejected on 24.12.2018. The Plaint is completely silent on status of **case number 22/2014** and final outcome, if any, of it.

9. The Plaintiffs claim that, as only civil court is empowered to determine title of suit land they have filed this suit by claiming that on the basis of her name in revenue records of suit; Defendant is trying to dispose/sell suit land to third party/ies; hence this suit for declaring to the effect that,

Defendant has no right title or interest in the suit land as well as preventing Defendant from disposing of or alienating suit land in favour of third party/ies.

10. By way of present application; Plaintiff is claiming interim relief, pending hearing and final disposal of the suit, restraining Defendant from disposing of suit land in any manner.

11. On perusal of record it is seen that, Defendant is personally served with summons - **Exh.: 6** - of the suit as well as notice - **Exh.:7** - of this application; however she has failed to file her appearance either in person or through her legal counsel; therefore Ld. Counsel for the Plaintiffs has given application - **Exh.: 9** - on 16.12.2023 for curtailing rights of filing written statement of Defendant; accordingly, on 18.01.2024 order came to be passed below application - **Exh.: 9** - for closing right of filing written statement and for proceeding with suit, ex-parte.

12. I have heard Ld. Counsel for the Plaintiffs as well as gone through record of the suit.

13. 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.

14. The Plaintiffs have pleaded that, order dated: 27.03.2023 [**Mark-3/29**] is passed behind their back in as such as no notice is issued to them; however, on going through order dated: 27.03.2023 it is seen that power of attorney holder - **Shri Thakorebhai Prabhubhai Chauhan** - of Plaintiffs have not only

contested and participated in said proceedings but has also deposed before Mamlatdar, Vyara and he has deposed to the effect that, suit land is in possession of husband of present Defendant since 30-25 years and husband of present Defendant has passed away for heavenly abode on 29.07.2002 and thereafter suit land is in possession of present Defendant as one of the legal heir and she is cultivating suit land as tenant of said land and he has further deposed that, he has no objection if she is declared tenant of the suit land and in fact she is paying land revenue of suit land. He has also deposed that, Defendant has been paying Rs.40=00 as tenancy amount.

In view of above fact as emerging on record it can safely be held that, pleadings and proofs on record are not in consonance with each other and Plaintiffs are trying to mislead this court and have stated false and incorrect facts on record; as such, on this count itself, they are not entitled to any relief much less interim relief; as such suit itself is liable to be thrown away at threshold.

15. Moreover appeal filed by on behalf of present Plaintiffs before Dy. Collector, Vyara being **RTS: Appeal No.: 199 of 2016** is rejected on the ground of delay; as there is nothing on record to show or indicate that, said order is carried in appeal and/or revision before higher forum including by way of writ petition before Hon'ble High Court; as such it

appears that, order dated: 27.03.2003 [**Mark-3/29**] has attained finality.

16. For the reasons assigned herein above, prima facie it clearly appears that, Plaintiffs have no right over suit land in any capacity and claim raised by them before revenue authority is completely discarded and their appeal is also thrown away; therefore, as per settled provisions of law laid down by Hon'ble High Court in the case of **Sorabji Derabji Vesuna Vs. Nanjibhai Jirabhai Umrigar** reported in **2002:GCD:1:130** OR **2001:GLH:3:759** to the effect that, while granting or non granting interim relief, Civil Court must respect findings of revenue authorities or in other words findings recorded by revenue authorities must be taken in consideration by Civil Courts; hence, Plaintiffs are not entitled to any interim on two counts viz. stating false and incorrect facts on oath and finding recorded by revenue authority is required to be honoured by this court while granting or not granting interim relief to Plaintiffs.

17. As Plaintiffs have stated false and incorrect facts, **on oath**, on record; therefore, as per directions issued by Hon'ble Supreme Court of India in the case of **Yashpal Jain Vs. Versus Sushila Devi & Others** [**Civil Appeal No.: 4296 of 2023**] by order dated: **20.10.2023** to all courts to impose cost, on litigants in appropriate case to curb luxury litigation.

18. Moreover, Hon'ble High Court has way back in 2016 has framed Rules named '**The Gujarat High Court Case Flow Management [Subordinate Courts] Rules, 2016**', wherein following provisions are made in Rule 10, which reads as under:

RULE 10: A COSTS:

Awarding of costs must be treated generally as mandatory. Cost should invariably follow the event. **Special reasons must be assigned if costs are not being awarded.** Costs should be assessed according to rules in force. If any of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

17. For the reasons assigned herein above; as Plaintiffs have failed to show even existence of any prima facie case in their favour, they are not entitled to any interim relief hence following order is passed:

::: ORDER :::

Application is rejected with cost which is quantified at Rs.10,000=00 [Rupees ten thousand] to be credited to State Exchequer.

PRONOUNCED IN OPEN COURT ON THIS 10TH DAY OF OCTOBER, 2025 AT TAPI @ VYARA.

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