

**In the Court of Principal Civil Judge, Uchchhal**  
**Order below Ex.5**

1. The brief facts of present suit and application at Ex.5 is such that there is an **agricultural ancestral property of Plaintiff situated at Bhadbhunja bearing Block/Survey no.31/1 paiki 1 admeasuring area of which is 17 Acres and 10 guntha and new block no./Survey no.62 area 2-81-48.**The Plaintiff has got the land from the lineal descendants of his grand father Boda Lalji Gamit.The property of above description will hereinafter be referred as Suit Land. The grandfather of Plaintiff had been cultivating the land since 1945 upto 2001 and after his death on 25.08.2001 the plaintiff is the heir of it.The defendant has taken illegal possession of the land without any information or permission of plaintiff . The defendant has been making construction upon the land without consent of plaintiff and without permission of gram panchayat. Thus, defendant is encroaching illegally upon the suit land and making construction illegally . The plaintiff or his heirs have never made any agreement or

transaction for transfer of the suit land to defendant . The plaintiff states that there were total 5 male heirs and 2 female heirs of Boda Lalji .Out of them all 5 heirs have been expired and the widows of them and their heirs are dependant upon suit land for agriculture and livelihood. If the defendant after making illegal possession , makes construction then plaintiff would become landless. On 24.03.23 plaintiff had made application to Mamlatdar Uchchal but he did not investigate the matter completely, therefore, plaintiff filed present suit. The defendant has taken the suit land from Boda Lalji by committing cheating and falsely caused the entry to be made in the name of defendants therefore the entry be nullified and construction be demolished and possession be given to plaintiff and perpetual injunction be given in favour of Plaintiff and against defendant to close illegal possession and construction.

2. On notice being issued the defendant has appeared through his Ld. Advocate and produced his reply at Exh.13. It has been stated by the defendant that the suit of the plaintiff is not true and not admitted. The title of Plaintiff is not legal. The suit is not tenable. The plaintiff has not produced signed and stamped/sealed copy of

pedhinama. The plaintiff has not produced any document showing his ownership. There is no legal title or possession or prima facie case of Plaintiff. The plaintiff has sought for perpetual injunction but he has not produced any document showing that he had possession upon the suit land on the date when suit was filed. The plaintiff has not shown as to when and how cause of action arose. The plaintiff's suit being devoid of cause of action it should be rejected under O.7.R.11. All the alleged heirs of Bodaji Lalji not made party, therefore, suit is barred for non joinder of necessary parties. The defendant has submitted his true facts under para 18 of his reply and stated that the suit land is running in the name of Defendant. The defendant has legally made construction upon the suit land and running ashramshala there. However, he has referred the existence of school to be in Survey no.61(old survey no. 31/1 paiki 2) and not the survey no. 62( i.e. old survey no. 31/1 paiki 1) which is the disputed property. Further, he has sought the cost of the suit to be paid by plaintiff and compensatory cost be ordered to be paid by plaintiff to the defendant. The suit and application of plaintiff being false and frivolous should be dismissed with costs.

**3. Following points arise for determination of Ex.5 Application.**

1. Whether Plaintiff proves that there is prima facie case of Plaintiff ?
2. Whether the Plaintiff proves that irreparable loss will be caused to the Plaintiff if temporary injunction is not granted in his favor.?
3. Whether Plaintiff proves that Balance of Convenience is in his favour.?
4. What Order.?

**4. My Findings:**

1. Affirmative
2. Partly in Affirmative
3. Partly in Affirmative
4. As per final Order

**REASONS**

**5. Joint Discussion of all the three issues:**

**5.1** Before Proceeding for discussion on the factual and evidentiary aspects in the suit/ present Application, it would be pertinent at the inception to discuss some relevant legal provisions and principles laid down by Hon'ble Supreme Court and Hon'ble High Courts with respect to grant of Temporary Injunction.

**5.2 Order- 39 Rule-1 CPC** . is applicable in a situation where defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit. In other words , it is a circumstance where the discretion may be used to protect the possession of the plaintiff. **Order- 39 Rule-2 CPC** states the procedure for granting of injunction to restrain breach of contract or other injury of any kind.

**5.3 Prima Facie Case, Balance of Convenience, Irreparable loss** -Following principles are essential for considering application for temporary injunction:

(1) there should be a serious question to be tried in the suit and that on the facts before the court there should be a probability of applicants being entitled to the relief asked for by him.

(2) the court's interference is necessary to protect him from the kind of injury which is irreparable before his legal right which can be established on trial.

(3) the comparative mischief or inconvenience which is likely to ensue from withholding the injunction will be greater than that which is likely to arise from granting.

**5.4** In **Dalpat Kumar V/s Pralhad Singh, AIR 1993 SC 276**, the Hon'ble Supreme Court has discussed the three essentials/Principles for grant of temporary injunction:

**i]** There is a serious disputed question to be tried in the court and that on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant.

**ii]** The Court's interference is necessary to protect the party from the species of injury. In other words irreparable injury or danger would ensue before the legal right would be established at trial and

**iii]** That the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to acted from granting it.

**5.5** In **Prakash Singh V/s State of Haryana 2002 (4) Civil L.J. 71 (P.H.)** Hon'ble Punjab and Haryana High Court has explained the phrase Prima facie case in following terms:

....Prima facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima facie case means that the contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily.

**5.6 In Agricultural Produce Market Committee Vs. Girdharbhai Ramjibhai Chhaniyara – AIR 1997 SC 2674)** it has been held that Temporary Injunction can be granted only if the person seeking injunction has a concluded right, capable of being enforced by way of injunction.

**5.7 Hon'ble High Court of Gujarat in J. M. Patel V. D.B. Patel reported in 2007 GLR 79,** in Para - 15 has held-

“It is not the law that moment the suit is filed, trying to make out some case, by ignoring the material on record injunction must follow. If material is not be considered at the time of deciding injunction application, Courts will be flooded with frivolous litigations. Therefore, the Court is required to examine minutely the merits of the case and the circumstances in existence....”

**5.8 In Gujarat Bottling Co.Ltd. vs Coco Cola co.19955 SCC** Hon'ble Supreme Court has held that Grant of temporary injunction pendente lite is in the discretion of the court. Again the relief is purely equitable and, therefore, the court on being approached, must, apart from other consideration , also take into account the conduct of the party approaching the court and invoking equitable jurisdiction of the court and may refuse to grant relief unless his conduct is free from blame.

**5.9 In Sankalchand Jaychandbhai Patel & ors. V/s. Vithalbhai Jaychandbhai Patel & ors. reported in 1997 (2) GLR. 1041 held-** It is settled law that mutation entries are only to enable the State to collect revenues from the persons in possession and enjoyment of the property and that the right, title and interest as to the property should be established de hors the entries, Entries are only one of the modes of proof of the enjoyment of the property. Mutation entries do not create any title or interest therein.

**5.10 Kureshi Hussainbhai Motibhai & ors. V/s.Saiyad Sidar Kesharbhai & ors., reported in 1985 (2) GLR. 139** wherein it is held that Bombay Land Revenue Code 1879 (V of 1879) Chapter X-A – Sec. 135 –Entry in the record of rights – Such entry has only **presumptive value** – the Civil Court can decide the rights finally – Revenue authorities are bound to correct the entry in accordance with Civil Court’s decision.

#### **DISCUSSION AND ANALYSIS:**

**6.** Now it is pertinent to discuss the factual aspects of the case at hand in view of the well settled legal principles and in the light of materials available upon the record.

**6.1** At **Mark 3/1** Plaintiff has produced Registered Power of Attorney executed in his favor by 19 heirs of **Bondabhai Lalji bhai Gamit (the ancestor of Plaintiff)** in which they have given the plaintiff power to sue etc.with respect to

**suit property.** At **Mark 3/2** the **Village Form no.7 &12** is produced by Plaintiff which appears to be in Marathi which reflects that the land bearing survey no.31/1 is new tenure and the **possessor was Bonda Lalji** the chronology appears from 1945-46 to 1985-86. There is an entry with respect to Tagai. **Mark 3/3** relates with Survey no.31 Khata no.67 part/hissa no. 1 paiki/1 satta prakar is 73 AA .The revenue record at **Mark 3/4** also reflects the name of Bondabhai Lalji bhai . At **Mark 3 / 5** the **death certificate of Bonda bhai Lalji bhai** is produced which reflects that he died on **25/08/2001**. At **Mark 3/ 6** there is **Pedigree** of Bonda Lalji .At **Mark 3/7** there is an entry number 293 Which suggest that he/Bonabhai had paid the amount within 12 years therefore on a **28/04/ 1968** the charge from the property with respect to tagai was discharged. At **Mark 3/ 8** there is **entry number 403** in the form number 6 hakk Patrak. At **Mark 3/ 9** there is Village form number 7,12 and 8-A Of **Block /Survey no. 62** (old block survey number 31/1 paiki 1) which is the disputed property.At **Mark 3/10** there is village form No. 7 of **Block/ Survey No. 61** in which the **possession of defendant is reflected.** Here it is to be noted that the survey no. 61 is not the disputed property. But it is

situated adjacent to the Suit property. The nature of holding is restricted under section 73 AA new and indivisible tenure. **Old block /survey number of Survey Number 61 is 31/1 paiki 2.** Survey no. 61 is in possession of Paschim Khandesh bheel seva mandal i.e. the defendant.

**Thus , it Prime facie appears that old survey no. 31/ 1 paiki 2 bearing new block/ Survey no. 61 relates with Paschim Khandesh bheel seva mandal whereas old block /survey number 31/1 paiki 1 bearing new survey number 62 relates to the plaintiff's predecessor Bonadabhai and afterb his death his legal heirs. This observation is based upon the revenue records produced by parties and the pleading of defendant under para 18.**

**6.2** The defendant in para 18 of written statement states that the defendant holds the land bearing **Survey Number 61** (the old survey number of which is 31/1/paiki 2) and which is also reflected from Village form no.7 of the property. The said land bears **khata number 159.** This contention of defendent gets support from the revenue record produced by both the parties. It clearly appears that there are two survey numbers 61 and 62. The Survey Number 61 reflects on revenue record Prima facie to be in possession of the defendant and survey number 62 reflects to be in the name of plaintiff and other lineal descendants of Bonda Lalji.

**6.3** The court commissioner was appointed to make report with respect to the physical position of the suit land. Accordingly the court Commissioner produced his report vide **Mark 19/3** along with **the sketch/ map** of the land. It has been reported in the court commissioner's report that there are various rooms constructed at the suit land, there is toilet constructed ,there are various residential houses water tank etc. In the North side there is Prathmik aashram Shala having six rooms . In the Western side of Prathmik Ashram Shala there is a girls' hostel having four rooms and toilet bathroom for girls, in the North side of the toilet bathroom there are 6 residential rooms for officials. Thus, looking to the report of Commissioner it appears that the suit land is having various Constructions upon it and the school and hostels etc are running there. However, there is no such things clearly reflected as to whether there is some construction in progress.

**6.4** Further, it is pertinent to note that the written statement of the defendant at **Ex.13** mentions about the **survey number 61. The plaintiff's dispute is with regard to survey number 62.** Although, **commissioner's report** mentions the survey number 62, it is not made clear as to whether the defendant has made the Constructions upon survey number 61 or 62 or

upon both the survey numbers. **The Revenue records reflect the Possession of defendant at survey number 61 and the possession of plaintiffs at survey number 62.** However, it appears that the defendant has made Constructions upon survey number 62 as per report of Court Commissioner. However, the report of Court Commissioner does not mention as to whether there are any new Constructions being run by the defendant . If the Constructions have been made in Survey Number 61 then Primafacie there is no issue because the same is reflected to be in Possession of defendant and that property is not in dispute in the present pleadings of the plaintiff. However , if the defendant has encroached in survey number 62 then it prima facie appears to be contrary to revenue records and accordingly there appears triable issue. That is to say that there is prima facie case of Plaintiff. Because there is no any documentary evidence supporting the relation of defendant with the suit land bearing Survey no.62(old block/survey no.31/1paiki 1). And even if he has entered into possession of survey no.62, then it needs to be tried.

**6.5** Further, in the written statement the defendant does not mention the position of survey number 62. The plaintiff in his pleadings does not mention about Survey Number 61 but seeks relief with respect to Survey no.62.

**6.6** Thus , as discussed above it comes out that At **Mark 3/9 village form no.7** is produced by plaintiff which is with respect to Block/Survey no.62 which appears to be situated at the left side/ western side of survey no.61. It is to be borne in mind that the dispute is with respect to survey no.62. However, as discussed earliar the defendant has not made any explanation with respect to survey no.62. He has explained in para no.18 of his written statement that he is running school in survey no.61. The village form no. 7 of survey no.61 is in the name of defendant. The map attached with it shows that Survey no. 62 is situated at the left/western side of Survey no.61.

**6.7** Further, looking to the report and map of Court Commissioner and revenue records it appears that Court Commissioner and parties have mixed both parts of land i.e. survey no.61 and 62 , though not established clearly. The reason for such presumption is: As per revenue records Survey no.61 is situated in the eastern side of survey no.62. However, in chaturdisha it is shown as other land of Bhadbhunja. Therefore, it is doubtful at this juncture as to whether the defendant has made construction upon survey no. 61 or 62. As per admission of defendant in para 18 of his reply at Ex.13 he is running school/ashramshala in survey no.61 for years and it gets support from revenue records and the plaintiff has brought

suit for survey no.62 and not for survey no.61. Defendant is silent with respect to survey no.62. Actually reply is expected from defendant with respect to Survey no.62. He must make it clear that he is doing his activities in survey no.61 and not in survey no.62 or if he has made construction or doing activities in survey no.62 then in what capacity ? Because no revenue record or any other document related with survey no.62 favours defendant whereas all the revenue records with respect to Survey no.62 reflect the names of plaintiffs. Thus, neither the defendant through his reply and documents nor the report of Court Commissioner clearly establish his defense with respect to survey no.62. On the other hand the plaintiff has produced all the revenue records in his favour with respect to Survey no.62.

**6.8** Thus, looking to the pleadings of the parties there is prima facie reason to believe that defendant is running school/Ashramshala in survey no.61 and he has nothing to do with survey no.62. Because in his written statement he has clearly stated that he is running Ashramshala in Survey no.61. Therefore, it prima facie appears that the balance of convenience with respect to survey no.62 is clearly in favour of plaintiff and they have to suffer irreparable loss if defendants would extend their activities of construction upon survey no.62. However, if any structure or construction would have been made upon

survey no.62, then it would follow the final out come of the suit. However, it is necessary to restrain the defendant from raising any new construction or to continue any construction upon the suit land of survey no.62. Therefore, I decide **Issue no.1 in Affirmative** and **Issue no. 2 & 3 in partly affirmative** and pass following order with respect to **Issue no.4** in the interest of justice.

### **Order**

- 1.** Parties are directed to maintain status quo upon the suit land bearing Survey no.62(Old survey no. 31/1 paiki 1) till final disposal of the suit.
- 2.** In particular, the defendant is directed not to make any construction work upon the suit land bearing Survey no.62(Old survey no. 31/1 paiki 1) till final disposal of the suit.
- 3.** No order as to costs at this juncture.

**Order pronounced today on 19th of March 2025 in open Court.**

**Date;19.03.2025**

**M.K.Rai,**

**Principal Civil Judge, Uchchhal**

**Judge Code GJ01420**

