

In the Court of Principal Civil Judge, Uchchhal**Order below Ex.5****Appearance:****For Plaintiff: Ld. Advocate Mr. K.S. Pradhan****For Defendant:Ld. Advocate Mr. R.M Valvi**

1. The brief facts of a present suit and application at exhibit 5 is such that there is agricultural land at moje Mohini Taluka Uchchhal district Tapi bearing its survey number 592 old block/ survey number 82 / 78 Admeasuring area of which is 1-19-29 aakar 2.82 ps.In the North side of the land there is survey number 593, in South side there is block/ survey number 591, in East side there is block/ servey number 118 and in the west side of it there is block survey number 588. With respect to the above land there has been a mutation entry number 1368 dated 09.12.2020 against which RTS appeal is pending before Prant Officer, Nijjar. the above land is in the legal title and possession of of plaintiff for years and it is in the knowledge of defendants, however they are raising unnecessary disputes with respect to the suit land.The revenue records are in the name of Plaintiffs and plaintiffs have been obtaining crop produce from the above land for years.On 26.06.2023 at 11 in the morning the plaintiff number 1 was cleaning the land and defendent came there and stopped

them from doing the work at the land and threatened to usurp the land forcefully therefore the plaintiffs have been constrained to bring present suit for declaration and perpetual injunction. Under para 12 of the plaint the plaintiffs have sought relief that it be declared that the agriculture land bearing khata number 419 new block survey number 592 old block survey number 82/78 area 1- 19-29 is of joint ownership and possession of plaintiffs and the defendants be perpetually restrained from interfering the plaintiffs either personally or through their persons, in cultivating the land taking crop proceeds from the land and to work in the land and also sought temporary injunction in favour of plaintiff and against defendants accordingly in their Application at Exh.5.

2. On notice being served to defendants they have appeared through their learned advocate and filed their reply at exhibit 11 and contended that the suit of the plaintiff is bad for non joinder of necessary parties and limitation .The facts of para number 1 are true and admitted by defendants.The defendants state that the suitland is of ownership and possession of defendants.The facts stated with respect to the boundary of the land is true however the facts stated by plaintiffs under para number 3 are false.The plaintiff number 1 in his lifetime has entered the names of his lineal descendants vide mutation entry number 1368 which came to the knowledge of defendants and has been challenged by them through RTS

appeal before Deputy Collector Nijjer. The suit land being hereditary and there lies legal rights of defendants therefore RTS appeal has been filed. **The Suit land was in the name of original owner and predecessor of defendants late Nooriya bhai Jethiya bhai. And after his death the defendants and plaintiff number 1 are jointly cultivating the land as the lineal descendants of him. The defendants having been in possession of the land, have been cultivating the land and obtaining the crop proceeds out of it. In the patrak the name of plaintiff number 1 is running as the elder in the joint family. And for that reason of his name being run in the revenue records as elder of the joint family he has raised false pedhinamu suppressing the details of defendants .The suit land is in the name of three brothers namely late Mogya bhai Nuria bhai, Shanto bhai Nuria bhai and plaintiff number 1. The defendant has not interfered in the land of anybody else except in their own land. Out of the plaintiff and defendant the sisters of plaintiff number 1 have not been given their share but the sisters out of the defendants are the legal heirs of Nooriyabai Jethiya bhai. They have not sought for their share in the property but they want their names to be reflected in the patrak so that they can be able to claim the government benefits which are entitled only to farmers/Agriculturists. Thus, the defendants have contended that the suit of the plaintiff is not maintainable and it should be dismissed with costs.**

3. The Plaintiffs have produced vide Mark 3/1 The village form number 8A of the suit land bearing khata number 419, Mark 3/2 village form number 7 of block survey number 592 old block survey number 82/78 , Mark 3/3 Village form number 12 of the same and Mark 3/4 village form number 6 with respect to entry number 1368. The entry number 1368 dated 23. 10. 2020 Show that the names of heirs of Randatiya bhai Nooriya bhai have been entered on the basis of Psedhinama and agreement.
4. The defendants have produced vide Mark 13 /1 a notarised affidavit by Santu bhai Nooriyabhai vasava. He has declared the heirs of of late Nooriya bhai Jethiya bhai Vasava in which the heirs have been stated who are: late Navagiben Nooriyabhai vasava as his wife, Shanti Ben nooriya bhai gamit as his daughter, Radatiya bhai nuriya bhai gamit as his son, Late Mogya bhai Nooriya bhai gamit is his son who is no more and has five heirs. Out of which his(Mogya bhai Nooriya bhai gamit's) wife Monaben is also died.Radtiben Nooriyabhai is daughter of Nooriyabhai. Shantubhai Nooriyabhai is the son of Nooriya bhai. This declaration is made on affidavit by defendant no. 4 Shantubhai Nooriyabhai .Vide Mark 13/2 the padhinama(Pedigree) of Nooriyabhai Jethiya bhai has been produced.Vide Mark 13/3 the village form no.7,7-Aand 12 is produced.Vide the list of Ex.13 the death certificates of Mogyabhai Nooriyabhai,Monaben

Mogyabhai, the copies of Aadhar card of Shantubhai Nooriyabhai, Shantiben Rayabhai, Radtiben Shantubhai and the copy of order of Prant Officer Nijjar have been produced through this order Deputy Collector Sri Nijjar has affirmed/confirmed the entry no.1368 rejecting appeal of defendants.

5. At exhibit 18 the plaintiff has produced his counter affidavit who is plaintiff no 3/2 Amitbhai Rupsingh Bhai Vasava in which he has denied the fact of joint cultivation by plaintiff and defendant and also stated that the defendants have nothing to do with the suit land he has also denied any share in the suit land divided between plaintiffs and defendants.
6. At exhibit 22 the written arguments have been produced from the side of defendants in which the defendants have repeated the same contents of their written statements and no any legal points have been raised. From the side of plaintiffs it has been contended that the revenue records are running in the name of plaintiffs and the entry number 1368 has been confirmed by Deputy Collector Nijjar .
7. 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.?

8. My Findings:

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

REASONS

9. Joint Discussion of all the three issues:

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

9.7 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....”

9.8 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.

9.9 In Sachindra Nath Sarkar and others versus Binapani Basu and others AIR 1976 Calcutta 277, held-

"18. Consistent with the decisions of this Court, the position in law is as follows:--

(a) the co-owner is not entitled to an injunction restraining another co-owner from exceeding his rights in the common property, absolutely and simply because he is a co-owner.

(b) before an injunction can be issued, the plaintiff has to establish that he would sustain, by the act he complains of some injury which materially would affect his position or his enjoyment or accustomed user of the joint property would be inconvenienced or interfered with.

(c) the question as to what relief should be granted is left to the discretion of the Court in the attending circumstances on the balance of convenience and in exercise of its discretion the Court will be guided by consideration of justice, equity and good conscience."

5.10 In **Bachan Singh versus Swaran Singh** AIR 2001 Punjab and Haryana 112, a Division Bench of the Punjab and Haryana High Court has held

"(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in, the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest."

9.11 **Roshani Devi And Others vs Suresh Kumar** on 9 August, 2017 Bench: Hon'ble Mr. Chauhan Hon'ble High Court of Himanchal Pradesh has held-

42. On consideration of the various judicial pronouncements and on the basis of the dominant view taken in these decisions on the rights and liabilities of the co-sharers and their rights to raise construction to the exclusion of others, the following principles can conveniently be laid down:-

i) a co-owner is not entitled to an injunction restraining another co-owner from exceeding his rights in the common property absolutely and simply because he is a co-owner unless any act of the person in possession of the property amounts to ouster prejudicial or adverse to the interest of the co-owner out of possession.

ii) Mere making of construction or improvement of, in, the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest.

(v) before an injunction is issued, the plaintiff has to establish that he would sustain, by the act he complains of some injury which materially would affect his position or his enjoyment or an accustomed user of the joint property would be inconvenienced or interfered with.

(vi) the question as to what relief should be granted is left to the discretion of the Court in the attending circumstances on the balance of convenience and in exercise of its discretion the Court will be guided by consideration of justice, equity and good conscience.

43. The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff:-

(i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction;

(ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's right or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and

(iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the Court with clean hands.

9.12 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.

9.13 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:

10. Now, looking to the rival contentions of both the parties and the documents available upon the records it is clear that the revenue records are in the name of plaintiffs and there are no any contrary documentary evidences against these revenue records .Plaintiff has not produced any independent evidence from the revenue records .**Defendants have produced with lists of documents at exhibit 13 which show that the plaintiffs and defendants are lineal descendants of their common ancestor Nooriyabhai Jethiyabhai Vasava .It appears from the pleadings of plaintiff that he has not disclosed his relationship with defendants .**There is no any document available upon the record to show as to how the property has come to plaintiff however the defendants have also not established through any cogent and credible document which can establish their basic proposition of defence .Further it is also pertinent to note that neither of the parties have tried to bring upon the record the actual physical position of property in dispute through court commission or otherwise .Looking to the block survey no 82/78 and the revenue records from 1988-89 to 2003-04 the occupiers name is Radatiyabhai Nooriyabhai Vasava. Thus looking to the antecedants of property and chronology of entries in the revenue records at this juncture it can be said that there is prima facie case of plaintiffs , and the defendants ,on the other hand ,have failed to establish that the plaintiff has

derived title or interest in the property from their common ancestor Nooriyabhai Jethiyabhai and that the defendants are co-owners in the suit land. However, plaintiffs have also not produced any independent order or transaction which can establish as to how the property came to plaintiff from the evidences adduced by both the parties it has not been proved either by plaintiff or the defendants that who are actually tilling the land. However, there is presumptive value of revenue records which clearly speak in favour of plaintiff. The law with respect to injunction is very much clear that the injunction can not be granted against co-owner. However, at this juncture it can not be concluded with certainty as to whether defendants are in physical possession of property or not. Whether they are actual coowners or not. Therefore, it can be said that balance of convenience is in favour of plaintiff and it appears that any irreparable loss may be caused to plaintiff if injunction is not granted, therefore, I decide issue no.1 in affirmative and issue no. 2 and 3 in in partly affirmative. In view of the findings it would be appropriate if parties are directed to maintain status quo till final disposal of the suit. Therefore, I pass following order in interest of justice with respect to issue no.4

ORDER

1. The application at exhibit 5 is partly allowed.

2. Both the parties are directed to maintain status quo with respect to the suit land till final disposal of the suit or any further order of the Court.

3. No order as to cost at this juncture

Order pronounced today on 09/05/2025 in the open Court .

Date-09-05-2025

(M.K.RAI)

Principal Civil Judge Uchchhal,

Dist.-Tapi

(Judge Code- GJ01420)