

GJVD050022952023



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**IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE**

**AT : SAVLI, DIST: VADODARA.**

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**REGULAR CIVIL SUIT NO.36/2023**

**ORDER BELOW EXHIBIT-05**

1. The present application has been filed by the plaintiff under Order 39, Rule 1 and 2 of the Civil Procedure Code as well as under Section 151 of the Civil Procedure Code for getting interim injunction.
2. The property in question is identified as 'suit Property' being situated at post Nani Bhadol, Taluka: Savli, District: Vadodara as mentioned in Para 2 of the suit.
3. It is the case of the plaintiffs that the plaintiff no.1 and defendant are the real brothers and they are doing work of agriculture. Further stated that the above mentioned suit property being the agricultural land as mentioned in Para 2 had been distributed by their father during his lifetime vide executed family distribution agreement dtd. 18.01.2000

Additional Senior Civil Judge, Savli.

between his three sons. The details of distribution of suit property is as under:

**Details of land distributed to the plaintiff no.1**

| <b>A/c. No.</b> | <b>Block/Survey No.</b> | <b>Admeasuring</b> | <b>Aakar</b> |
|-----------------|-------------------------|--------------------|--------------|
| 402             | 109/2 paiki             | 1-41-14            | 7.09         |
| "               | 213 paiki               | 0-13-15            | 0.81         |

**Details of land distributed to the defendant - Chauhan Jayeshkumar Chandubhai**

| <b>A/c. No.</b> | <b>Block/Survey No.</b> | <b>Admeasuring</b> | <b>Aakar</b> |
|-----------------|-------------------------|--------------------|--------------|
| 402             | 109/2 paiki             | 1-41-14            | 7.09         |
| "               | 213 paiki               | 0-13-15            | 0.81         |

**Details of land distributed to the brother of plaintiff & defendant - Chauhan Yogeshkumar kumar Chandubhai**

| <b>A/c. No.</b> | <b>Block/Survey No.</b> | <b>Admeasuring</b> | <b>Aakar</b> |
|-----------------|-------------------------|--------------------|--------------|
| 400             | 290                     | 0-06-07            | 0.37         |
| "               | 640/6                   | 1-12-41            | 5.81         |
| "               | 211/3                   | 0-07-08            | 0.44         |

As per the above mentioned distribution, there was a clear, specific and independent distribution of land assigned to the brother of the plaintiff and defendant named Yogeshbhai Chandubhai Chauhan by their father, whereas the land being

Survey No.109/2 & Survey No.213 has not specifically mentioned or cleared which side of land being distributed between the plaintiff no.1 and the defendant. However, at the time of execution of the distribution agreement, in presence of their father and Yogeshbhai, the area of the plaintiff no.1 in the eastern direction of land being Survey No.109/2 in the north-south length and east-west width has been assigned to the plaintiff no.1, whereas the defendant has been assigned the western direction of the said land and they have possessed the land as per their distribution. Same way, the area of the southern direction of land being Survey No.213 has been assigned to the plaintiff no.1 and the area of the eastern direction of land being Survey No.213 has been assigned to the defendant and they have possessed the said land as per their distribution. Further, on 23.06.2023, as the plaintiff intended to make fencing on his part of the land being Survey No.109/2 from the southern direction to northern direction, therefore in this regard, he talked with the defendant. However, the defendant got angry on the plaintiff and denied to make fencing on the land and also gave threat to the plaintiff. Hence, the plaintiff has filed the present suit for declaration and permanent injunction against the defendants and also prayed to restrain the defendant or their legal heirs from interfering or making any obstruction or entering into

the possession of the plaintiff's suit property or to prevent them from making fencing on the suit property of the plaintiff.

4. Notice of this application was served to defendant. In pursuance of service of notice defendant appeared before the Court. Defendant file his written-statement vide exhibit-17.

(4.1) Para wise denial is there by the defendant in its written statement. Additionally, defendant pleaded that the plaintiff no.1 and the defendants are the real brothers and the plaintiff is not entitled to get the suit property as prayed for, as both his brothers are living in Vadodara since many years and doing services there. Further stated that one distribution agreement has been executed by their father during his lifetime and as the said agreement, all the three brothers have possessed the suit land as per their respective shares.

(4.2) As per the distribution agreement, disputed suit land being Survey No.109/2 has been equally distributed between the plaintiff and the defendant and northern side land has been assigned to the plaintiff, whereas southern side land has been assigned to the defendant. In this way, the suit land being Survey No.109/2 has been divided as per north-south direction and not as per the east-west direction. The defendant has cultivated his part of the suit

land and gets agriculture income every year and thereby supporting his family. Whereas the land of the plaintiff which was distributed by their father during his lifetime, has been lying barren for many years. According to the division that has been made between them, a fence has been laid down to the extent of the land, defining the boundary between the two parts, which is still present on the spot.

**(4.3)** Thus, as the plaintiff intended to sell his part of the suit land, therefore he created false and fabricated facts with regard to division of east-west direction of the suit land and filed a false suit on the basis of it. The defendant also stated that he has no objection, if the plaintiff has made fencing on the direction of his part of the suit land. Also with an ulterior motive, the plaintiff has not disclosed proper details with regard to admeasurement, aakar etc. of the suit land. Also the plaintiff has not produced affidavit of any farmers who have the adjacent land of the suit land of the plaintiff and have all the knowledge about the distribution of the suit land. Also, the division has been took place in the year 2003 and the plaintiff has not raised any dispute regarding this division since 20 years, as he has educated, therefore the plaintiff has no any legal cause of action to file the present suit against the defendant. Hence,

prayed to dismiss the suit. The plaintiff has filed counter Affidavit at Exhibit-18.

5. **Submissions of either sides.**

(5.1) Learned advocate for the respective parties has carried out arguments of this application. Learned advocate for the plaintiff Mr.R.R.Patel produced documentary evidences vide Mark - 3/1 to Mark - 3/6 in support of his case and filed written arguments at Exhibit-19, while Ld. Advocate for the defendant filed written arguments at Exhibit-20.

(5.2) Per contra, defendant filed written statement at Exhibit-17 and also filed an application for appointment of Court Commissioner for local inspection of the suit land vide Exhibit-21. The same was decided by my Ld. predecessor judge on 04.11.2024 and as per the said order, the defendant has been directed to deposit Rs.3,000/- as a remuneration of the Court Commissioner. Even though, the said amount has not been deposited in the Court by the defendant, therefore the said application has been ordered to be 'filed' on 21.01.2025 by my predecessor judge. At the end both the advocates mentioned before the Court to pass necessary order considering the record and proceedings of the suit.

6. **Considering the facts as well as documentary evidence and written submission for deciding this application, following factors are taken into consideration:**

**ISSUES**

- 1) Whether the Plaintiff proves that he has a prima facie case?
- 2) Whether the Plaintiff proves that the balance of convenience is in his favour?
- 3) Whether the Plaintiff proves that if the injunction as prayed for is not granted, then he would suffer irreparable loss which cannot be compensated in terms of money?
- 4) What order and decree?

7. **The findings to the above stated issues are given below and reasons for the same are discussed hereinafter:**

- 1) In the Negative.
- 2) In the Negative.
- 3) In the Negative.
- 4) As per the final order.

8. Before discussing the factual aspects of the matter, certain legal provisions and settled law with regard to temporary injunction are required to be taken into consideration. The Hon'ble Supreme Court as well as the Hon'ble High Court by catena of decisions have laid down that the relief of temporary injunction may be granted after testing the facts, circumstances and evidence produced by the plaintiff upon the scale of following principles; (1) Plaintiff establishing a prima facie case, (2) Plaintiff showing irreparable injury to him on refusal to grant temporary injunction, (3) Plaintiff showing balance of convenience in his favour and that greater inconvenience will be caused to him if temporary injunction is refused, and (4) any other factors favouring the plaintiff. Granting an injunction is a matter of discretion and while exercising that discretion, the Court has to satisfy itself that whether the plaintiff actually has a 'triable case'. Before invoking the jurisdiction of the Court to seek temporary injunction, the plaintiff is bound to show that he has a legal right and the defendant is trying to invade that right. Further, it is the settled position of law that the plaintiff has to stand on his own legs and the plaintiff cannot gain any benefit of the weakness of the defendant.

9. **Discussion as to claim of the plaintiff in view of above-mentioned ingredients.**

- (9.1) Having above settled principles in mind, this Court has to find that whether plaintiff's prayer falls within ambit under which this Court can extend benefit of order of injunction in favour of plaintiff.
- (9.2) Having heard both sides, this Court has gone through record and proceedings of the suit. Admittedly, this suit is filed for protection of possession by the plaintiff along with other reliefs by way of injunction. It is the settled law that at this stage of interim injunction, the Court is not required to examine the merits of the case, but the Court has to inquire whether there is a fair, prima facie triable case or not and whether there exist three established principles for granting interim injunction in favour of the plaintiff. On perusal of the documentary evidence produced on record vide Mark 3/2, 3/3, 3/4 & 3/5 which are taken into consideration and looking to the prayer of the suit as well as interim injunction application, it transpires that Survey No.192/2 paiki admeasuring 1-42-14 Hector-Aare-Square Meter belongs to the defendant and not the plaintiff and it prima facie reflects that the defendant is legal owner and occupier of the said land on the basis of Record of Right-6 and Agreement produced at Exhibit 3/4 & 3/5 respectively. Hence, the plaintiffs have failed to establish the fact that they are occupying disputed suit property and legal owner

of the said property prima facie. Hence, the plaintiff has no prima facie case and balance of convenience is also not in his favour. The plaintiffs have failed to establish legal right of ownership and possession over the disputed suit property. Hence, if injunction is granted in favour of the plaintiff, then the defendant would suffer irreparable loss as the defendant has got legal right of ownership over the disputed suit property as discussed above.

(9.3) Therefore, such kind of relief cannot be granted in an interim stage. Hence, in view of the above mentioned discussion, I answer of issue no.1 to 3 is in negative and in the interest of justice for the issue No.4 following final order is passed.

**:: Order ::**

- (1) The interim injunction application of plaintiff is hereby rejected.
- (2) Parties shall bear their own costs.

**Order signed & pronounced in open court today  
on 7<sup>th</sup> August, 2025**

Place :- Savli.  
Date :- 07/08/2025

**(Abhijit Keshav Mavalankar)**  
Additional Senior Civil Judge,  
Savli, Dist: Vadodara.  
Judge Code No.:-GJ-00677

/R.J. Chauhan/

Additional Senior Civil Judge, Savli.