

GJVD060000662024

**R.C.S. No.2/2024****ORDER BELOW EXHIBIT -5**

- (1) Vide this separate order I shall dispose of the application u/o 39 rule 1 & 2 read with section 151 of C.P.C. The plaintiff has preferred present application under Order-39 rule 1&2 of Civil Procedure code supporting with affidavit and along with the suit, seeking interim injunction against the defendant as prayed in the application. The court has passed an order to issue Urgent show cause notice to the defendant. Defendant appeared through advocate Ld. Advocate Shri M. A.parmar but did not submitted reply. Hence proceeded ex parte.
- (2) Plaintiff case is that properties bearing Survey 76,105,256 paiki1, 264/A,264/B/1,264/B/2, 306 and Survey no.27 of Khata no.274 situated at Village; Vasvel,, Ta: Waghodiya, District; Vadodara (Hereinafter called the suit properties) are the undivided ancestral agricultural properties of the plaintiff and defendant. That original owner of the suit property was Lt.Somabhai Motibhai. Plaintiffs and defendants are their son/grandson, That plaintiffs are the childrens of first wife of the Somabhai while defendants are the childrens from the second wife of the Somabhai. Somabhai Motibhai died on 11.08.1999 and plaintiff and defendants both became the owner of the suit property and their name was entered in the revenue records vide revenue no. 1776. So all the parties of the suit have equal rights in it. That defendants behind their back by representing that wanted their signature for the bank loan purpose in the guise of the loan document taken their signature in relinquishment deed on 12.06.2009 before the

notary which is registered before the notary vide document no.804/2009. That defendant on the basis of such document diminished their name in the revenue record without service of the notice u/s 135 -D. That plaintiff did not get the right to defence their case so they filed the R.T.S Vivad application no.480/2016 and meanwhile filed the criminal complaint against the defendant no.2. That compromised has been taken place b/w the plaintiff and defendant no.2 and defendant no.2 had prepared a document in favour of the plaintiff that he has no objection if the name of the plaintiff are entered into the revenue records.. That Naib collector condone the dealy in filing of application on 10.02.2018 but rejected the application , So order of Naib collector was challenged before the collector vide R.T.S Vivad application no.223/2020 which was rejected by collector on 26.10.2023. Hence the present suit .

Plaintiff pray for the following relief;

- (i) To declare that entry no.1936 is made illegally by the defendants hence illegal.
- (ii) Order to restore the name of the plaintiffs in the revenue record.
- (iii) Temporary restraining the defendant to mortgage, to gift or to create charge over the suit property to any person, institution and bank til the disposal of the suit.

In the temporary injunction application he prayed the following relief ;

- (i) Restrain the defendants to sell, mortgage, gift to create charge over the suit property till the disposal of the present suit.

Plaintiff claimed that they have the prima facie case, balance of convenience in his favour and irreparable loss caused to the plaintiff if defendants transfer, mortgage or take loan over the suit property without their consent.

While considering an application for injunction, it is well-settled;

the courts would pass an order there upon having regard to: (i) Prima facie (ii) Balance of convenience (iii) Irreparable injury. A finding on 'prima facie case' would be a finding of fact.

My findings for the aforesaid issues are as follows:

1. In Negative
2. In Negative
3. In Negative
4. As per order

Arguments

(3) Advocate of the plaintiff argued that suit property is the ancestral property, So they have the birth right in it. He also argued that irreparable loss cause to him, which cannot be compensated in terms of money . Hence the present application is allowed and the defendant is restrain the transferring the suit property to the third person. Defendant admitted that the suit property is the ancestral property. He also argued that suit properties are the undivided Hidu joint family, So until and unless partition taken place between him and Pallivikaben, Plaintiff has no right in the suit property. So plaintiff has no prima facie case.

REASONS

ISSUE NO.(1)

(4) Defendant neither submitted the reply of the application nor submitted the written statement. Thus the plaintiff statement remain uncontroverted. It is admitted fact between the parties of the suit that the property is the ancestral party of the parties of the suit and the defendant are direct lineal descendant of Lt. Sombhai. It was held in Radhamoni Vs Dibakar AIR 1991 Pat.15 that- Every Hindu family is presumed to be a joint family. **The normal state of every Hindu family is that it is joint family, presumably, joint in food, worship and estate and it continues to be joined** (Rukhmabai v Laxminarayan AIR 1960 SC 335).

Though the presumption of jointness is rebuttal. **There are only two ways to rebut the presumption of jointness viz. partition and extinction of the family.** It is for the person alleging severance of the Hindu joint family to prove it. Reliance can be placed on **Bhagwati Vs Mohan Singh AIR 1925 PC 141** Plaintiff claim the suit's land is an undivided hindu joint family property. Defendant did not denied such fact.

Plaintiff claims that defendants fraudulently taken their signature over the notarized relinquishment document in the guise of the documents of the bank loan. On perusal of the Mark 4/17 it transpires that defendant no. accepted that due to mistake name of the plaintiff are diminished in the revenue record and they have no objection if the name of the plaintiffs are entered in the revenue record. On perusal of the Markk 4/17 it transpires that name of the plaintiff diminished in the revenue record due to the Fargati lekh. Referring to the Registration Act, 1908, the Gujarat High Court has opined that if any right concerning a property valued above Rs. 100 has been relinquished or extinguished, it requires compulsory registration before the registering authority under the Act. In the absence of such registration, such relinquishment cannot affect any immovable property comprised therein and the said. So the relinquishment deed can not be relied upon until and unless the registered. So plaintiff and defendant both of the equal rights in the suit property as it is still undivided. So plaintiff has the prima facie case in his favour and balance of convenience also in his favour and irreparable loss cause to the plaintiffs if defendants restrain the plaintiffs to enter into the suit property or to cultivate the same but it is also established principle of law that co - owner can transfer their undivided share in the suit property.

So in that view, I am inclined to pass the following order;

ORDER

Plaintiff present application is partially allowed.

1. Defendants are temporarily restrained to mortgage, to gift, to create charge without consent of the defendants till the disposal of the present suit.
2. Defendants are temporarily restrain not to restrain the plaintiff to enter into or to cultivate the suit property till the disposal of the present suit.

Order is pronounced in open court on 21 February 2025.

(Mohit Sharma)
Principal Civil Judge, Waghodia.
GJ 01323

Self...