

ORDER BELOW EXH.5**Special Civil Suit No. 175 / 2014**

- [1] *Read the application of plaintiffs by Exh.5, and perused the documentary evidences produced by plaintiff vide the list at Exh.3. I have also read and referred the contents of written statement filed by defendant no.1, and defendant no.2 & 3 vide Exh. 26 and Exh.23, respectively. I have also considered the report of Court Commissioner submitted on record vide Exh.16/1. The learned advocate of plaintiffs has submitted his written submission vide Exh.36, while no such written or oral submission is made on behalf of defendants.*
- [2] *Now, considering the facts narrated by plaintiffs in this application, the plaintiffs are required to establish prima facie that the land bearing survey no.33/1-B is actually stands in the name of plaintiffs only but anyhow defendant no.1 has got an assessment of the open plot of the said land situated at village Borij, District : Gandhinagar. Plaintiffs are also under lawful obligation to establish that the assessment made in the name of defendant no.1 is wrong; and therefore, he has no right to sell out the land of open plot to defendant no.2 & 3.*

It is a fact on record that the said suit land is sold out to defendant no.2 & 3 by defendant no.1 executing

registered sale deed dt. 23.06.2014. It has been written in such sale deed that the defendant no.1 is an owner and occupier of the said land which is known as property no.241/3 and property no.241/4. The record and proceedings clearly shows that the suit land and property no.241/3 & 241/4 are not belong to defendant no.1, as its owner. The defendant no.1 to 3 have stated in their written statement that defendant no.1 is an owner of the suit land and he has sold out some portion of such suit land to defendant no.2 & 3 by way of registered sale deed. It is clearly shown on record that none of the defendants have ever produced any revenue record to establish that the suit land or any portion of it belongs to defendant no.1, as its owner. It is true that the defendant no.1 has sold out the suit land i.e., property no.241/3 and 243/4 to defendant no.2 & 3 by executing registered sale deed; however, the defendants poorly failed to establish that the registered sale deed is executed because defendant no.1 is an owner and occupier of the suit land i.e., the property. The document produced vide Mark 3/2 indicates that the suit land was purchased by one Kripashankar Ranchhodlal and Maganji Samji i.e., father of plaintiffs. This transfer came to be made in the year April 1953 by entry no.45. The said land was given NA permission by the authority and this fact is envisaged through the document produced vide Mark 3/3. The 7/12 abstract

produced vide Mark 3 / 4 clearly shows that the suit land at relevant time, runs in the name of Kripashankar Ranchhodlal and Maganji Samji. Mark 3/5 and Mark 3/6 i.e., 7/12 abstract shows that the suit land was divided into two parts and one of the part i.e., 33/1-B come in the name of father of plaintiffs i.e., Maganji Samji. When the plaintiffs have shown authentically that their father was the owner and occupier of the suit land bearing 33/1-B; and then after, the plaintiffs. The defendants are under obligation to establish that how defendant no.1 become the owner and occupier of the said suit land. There is nothing on record which shows that under what authority, defendant no.1 has executed sale deed in favour of defendant no.2 & 3. It is true by virtue of an assessment of the suit land in name of defendant no.1, the defendant no.1 has said himself to be an owner of the suit land on ground of such assessment made by Talati-cum-Mantri of village Borij, District:Gandhinagar; however, the said assessment was challenged by plaintiffs before the Prant Officer, Gandhinagar vide No.85/2014 produced vide Mark 30/4. The order passed by the Prant Officer, Gandhinagar on 28.11.2014, clearly indicates that the assessment in favour of defendant no.1 by Talati-cum-Mantri of village Borij is cancelled. Now, when the assessment made in favour of defendant no.1 came to be cancelled by the Prant Officer, Gandhinagar the defendant no.1 has got no right to sell out

any portion of the suit land to defendant no.2 & 3 as being an owner of it.

[2.1] *Undoubtedly, the defendant no.1 has already sold out the portion of the suit land to defendant no.2 & 3 but as defendant no.1 has no right to do so, the ad interim injunction is as claimed by plaintiffs requires to be granted. The plaintiffs have shown strong prima facie case in their favour. There is a chance of transferring the land in question to somebody else by defendant no.2 & 3, and if that is not stopped, the plaintiffs will suffer heavy loss and will also face multiplication of proceedings. Under the circumstances, the balance of convenience lies in favour of plaintiffs. If, ad interim injunction is not granted, there are every chance of selling, transferring or assigning the suit land to anybody without any revenue right; and therefore, the plaintiffs will suffer the loss which cannot be compensated in terms of money. Under the circumstances, this applciation of plaintiffs requires to be allowed and allowed accrodingly by passing following order:*

**// O R D E R **

- 1. The present application filed by plaintiffs at Exh.5 is hereby allowed.**
- 2. The defendants, their men, servants, agents etc are hereby temporarily restrained from**

transferring, mortgaging, gifting or assigning the suit land i.e., suit property no.241/3 & 241/4 to anybody and/or restrained from causing any obstruction, hindrance or do not remove the plaintiffs from the said suit land and/or property till final disposal of the suit.

3. The cost shall cause the cost of the suit.

Signed and pronounced in the open Court on this 7th day of November, 2015.

***Date: 07/11/2015
Gandhinagar***

***(Chaitanya. R. Barot)
GJ00352
Principal Senior Civil Judge
Gandhinagar***

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