

GJSR010071372015 	 सत्यमेव जयते	Received on		19-11-2015	
		Registered on		19-11-2015	
		Decided on		10-08-2026	
		Duration		Y	M
			10	08	24

**IN THE COURT OF 16TH ADDITIONAL DISTRICT
JUDGE, SURAT AT SURAT**

Misc. Civil Appeal No. 110/2015

Exh. 92

1. Rameshbhai Bhanabhai Bhagat

Aged: adult, Occupation: Agriculturist\Business,
Residing at: At village Abhva, Ta. Choryasi,
District Surat.

2. L.R.s of deceased Amratbhai Bhanabhai Bhagat

Died during the pendency of the suit

2.1. Minaben wd/o. Amruthbhai Bhanabhai

Aged: 53 years, Occupation: House hold,
Residing at: Laya Faliyu, At village Abhva,
Ta. City, District Surat.

2.2. Pintu Amruthbhai Bhanabhai

Aged: 30 years, Occupation: Agriculturist,
Residing at: Laya Faliyu, At village Abhva,
Ta. City, District Surat.

2.3. Sejalben d/o. Amruthbhai Bhanabhai

Aged: 30 years, Occupation: House hold,
Residing at: Master Mahollo, At village Sarsana,
Police Station: Khajod, Ta. City, District Surat.

2.4. Sefaliben d/o. Amruthbhai Bhanabhai

- 2.5. Aged: 28 years, Occupation: House hold,
2.6. Residing at: F/6, Panchvati Society, Parle Point,
2.7. Ta. City, District Surat.

3. L.R.s of deceased Sundarbhai Bhanabhai Bhagat

Died during the pendency of the suit

3.1. Hansaben wd/o. Sundarbhai Bhagat

Aged: 68 years, Occupation: House hold,
Residing at: Laya Faliya, At village Abhva,
Ta. City, District Surat.

3.2. Madhuben d/o. Sundarbhai Bhagat

Aged: 47 years, Occupation: House hold,
Residing at: Laya Faliya, At village Abhva,
Ta. City, District Surat.

3.3. Dineshbhai Sundarbhai Bhagat

Aged: 50 years, Occupation: Agriculturist,
Residing at: Laya Faliya, At village Abhva,
Ta. City, District Surat.

3.4. Kokilaben d/o. Sundarbhai Bhagat

Aged: 42 years, Occupation: House hold,
Residing at: Chapati Faliya, At village Khajod,
Ta. City, District Surat.

3.5. Ramilaben d/o. Sundarbhai Bhagat

Aged: 43 years, Occupation: House hold,
Residing at: Ambika Niketan, Ambaji, Surat.

3.6. Hemantbhai Sundarbhai Bhagat

Aged: 40 years, Occupation: Agriculturist,
Residing at: Laya Faliya, At village Abhva,
Ta. City, District Surat.

.....Appellants

V E R S U S

1. L.R.s of deceased Babubhai Gopalbhai Ahir

1.1. Nimeshkumar Babubhai Ahir

Aged: about adult, Occupation: Agriculturist/Business,
Residing at: C/24, Jamna Nagar Society,
Ram Chowk, Ghod Dod Road, Surat.

1.2. Pinal Babubhai Ahir

Aged: 37 years, Occupation: Agriculturist/Business,
Residing at: As above.

1.3. Nimeshkumar Babubhai Ahir

Aged: 34 years, Occupation: House hold,
Residing at: As above.

2. L.R.s of deceased Ramanben Babubhai Ijardar

Died during the pendency of the suit

2.1. L.R.s of deceased Satishbhai Babubhai Ijardar

Died during the pendency of the suit

2.1.1. Ushaben wd/o. Satishbhai Babubhai Ijardar

Aged: 62 years, Occupation: House hold,
Residing at: 177, Raghavsath Street,
Nr. RadhaKrishna Temple, Bhimpor, Surat.

2.1.2. Anandiben Jigarbhai Patel d/o. Satishbhai Babubhai Ijardar

Aged: 37 years, Occupation: House hold,
Residing at: 956, Japtisath Street, Bhimpor,
Surat.

2.1.3. Anavrutti Satishbhai Patel

Aged: 33 years, Occupation: House hold,
Residing at: 177, Raghavsath Street,
Nr. RadhaKrishna Temple, Bhimpor, Surat.

2.1.4. Anirudh Satishbhai Ijardar

Aged: 26 years, Occupation: Study,
Residing at: 177, Raghavsath Street,
Nr. RadhaKrishna Temple, Bhimpor, Surat.

2.2. Kishorbhai Babubhai Ijardar

Aged: adult, Occupation: Service,
Residing at: As above.

2.3. Shaileshbhai Babubhai Ijardar

Aged: adult, Occupation: Service,
Residing at: As above.

2.4. Nirmalaben Chhotubhai Patel d/o. Babubhai Ijardar

Aged: adult, Occupation: House hold,
Residing at: Deru Faliyu, B/s. Juna Hanuman ji
Mandir, At Bhimpor, Post: Dumas, District Surat.

2.5. Sudhaben Jitendrabhai Patel d/o. Babubhai Ijardar

Aged: adult, Occupation: House hold,
Residing at: Village Valvod, Ta. Borsad, District-
Anand.

.....Respondents

Appearance:

Mr. N.N. Thaker, Learned Advocate for the Appellants.

Mr. H.R. Modi, Learned Advocate for the Respondent No.1.

Respondent No.2 died during the pendency of the suit and Ex-party qua the legal representatives of the respondent No.2.

**AN APPEAL UNDER THE PROVISIONS OF SECTION 96
Read With Order 41 OF CODE OF CIVIL PROCEDURE,
1908.**

J U D G M E N T

1. The present Misc. Appeal under Order 43 Rule 1(r) of the Code of Civil Procedure arises out of the order passed below Exh.5 by the Ld. 16th Additional Senior Civil Judge, Surat (hereinafter Ld. Trial Court) in Special Civil Suit No.171 of 2014, whereby the application preferred by the plaintiffs seeking temporary injunction came to be rejected. The appellants herein are the original plaintiffs, whereas the respondents are the original defendants. The appellants, being gravely aggrieved and dissatisfied with the impugned order as being manifestly illegal, unsustainable in law, perverse on facts, and violative of the fundamental principles of natural justice, invokes the appellate jurisdiction of this Court.
2. For the sake of convenience and to avoid confusion, the appellants herein, who happen to be the plaintiffs before the Ld. Trial Court, shall hereinafter be referred to as the "plaintiffs", the respondent No.1 herein shall be referred to according to his original status before the Ld. Trial Court as the "defendant No.1" and deceased respondent No.2 herein shall be referred to according to her original status before the Ld. Trial Court as the "defendant No.2". The parties shall accordingly be addressed in the same manner throughout this judgment.

Also, Record and Proceedings of the Special Civil Suit No.171/2014 were called for.

3. Factual Matrix:

- 3.1. The dispute pertains to agricultural lands situated at Village Abhva, bearing Revenue Survey Nos.432. The plaintiffs have challenged registered sale deed dated 28.03.2011 executed by defendant No.2 in favour of

defendant No.1, registered with the office of the concerned Sub-Registrar under Registration Nos.5317. The plaintiffs seek a declaration that the said sale deeds are illegal, sham, void, ineffective and not binding upon them.

- 3.2.** The plaintiffs contend that, prior to the aforesaid sale transactions, defendant No.2 had instituted Special Civil Suit No.451 of 1991 against the plaintiffs, claiming an undivided one-half share in the suit properties. In the said suit, defendant No.2 had also obtained an order of temporary injunction restraining the plaintiffs from transferring or alienating the suit properties during the pendency of the suit.
- 3.3.** According to the plaintiffs, notwithstanding the pendency of the said litigation and the dispute regarding the alleged share of defendant No.2, defendant No.2 subsequently alienated the suit property in favour of defendant No.1. The plaintiffs contend that the said transaction was intended to introduce a third party into the pending dispute and to alter the nature of the subject matter of the litigation.
- 3.4.** The plaintiffs further rely upon a Will dated 22.03.1954 allegedly executed by deceased Makanbhai Valabhai in favour of his widow Benaben. On the basis of the said Will, Mutation Entry No.141 came to be entered and subsequently certified on 22.11.1960. Defendant No.2 challenged the said revenue proceedings by Appeal Nos.1/68 and 2/68 before the Deputy Collector, Chorasi Prant, which, according to the plaintiffs, were decided in

their favour.

- 3.5.** It is the further case of the plaintiffs that, although defendant No.2 had disputed the genuineness of the Will in the subsequent Special Civil Suit No.451 of 1991, she did not seek any specific relief for cancellation or declaration regarding the invalidity of the Will. The plaintiffs accordingly contend that their names continued in the revenue record pursuant to the aforesaid mutation proceedings.
- 3.6.** The plaintiffs further contended that defendant No.2, whose alleged one-half share was itself the subject matter of adjudication in Special Civil Suit No.451 of 1991, could not have created third-party rights in the suit properties during the pendency of such dispute. On these grounds, the plaintiffs sought interim protection against further alienation or creation of third-party rights in the suit property.
- 3.7.** The Ld. Trial Court, after considering the rival contentions and the material available on record, rejected the application for temporary injunction at Exh.5. The Ld. Trial Court also made certain observations concerning the Will relied upon by the plaintiffs.
- 3.8.** Being aggrieved by the said order, the plaintiffs have preferred the present appeal, contending, inter alia, that the Ld. Trial Court failed to properly appreciate the earlier litigation, the interim injunction granted therein, the revenue proceedings concerning Mutation Entry No.141, the dispute regarding the Will and the subsequent alienation made by defendant No.2 in favour of defendant

No.1.

- 3.9.** The question arising for consideration in the present appeal is, therefore, whether the Ld. Trial Court was justified in refusing temporary injunction to the plaintiffs and whether, on the basis of the material available on record, the plaintiffs have established a prima facie case, balance of convenience and likelihood of irreparable injury warranting interference with the impugned order.

4. Grounds of Appeal agitated in the appeal memo:

- 4.1.** The plaintiffs have assailed the impugned order primarily on the ground that the Ld. Trial Court has committed serious errors of law and fact while rejecting the application at Exh.5. It is contended that the impugned order is perverse, contrary to the material on record and suffers from non-application of mind.
- 4.2.** The principal grievance of the plaintiffs is that, while deciding an application for temporary injunction, the Ld. Trial Court has virtually adjudicated the entire suit and recorded final or conclusive findings regarding the validity and genuineness of the Will allegedly executed by deceased Makanbhai Valabhai. The question whether the Will is genuine, fabricated or surrounded by suspicious circumstances is a matter requiring evidence and could not have been finally determined at the interlocutory stage.
- 4.3.** The Ld. Trial Court has erroneously treated the Will as suspicious mainly on the basis of the alleged delay in referring to the Will, the contents of the earlier pleadings and the opinion of the handwriting expert. The expert

opinion was based upon photocopies and not original documents and, in any event, could not have been treated as conclusive evidence at the stage of Exh.5.

- 4.4. Ld. Trial Court failed to properly appreciate the subsequent amendment made in the written statement in Special Civil Suit No.451 of 1991, whereby the plaintiffs had specifically pleaded the existence of the Will and the fact that deceased Makanbhai Valabhai had bequeathed the suit property in their favour. The effect of the amendment was required to be considered in accordance with law and the mere absence of a reference to the Will in the original written statement could not, by itself, constitute a sufficiently suspicious circumstance.
- 4.5. Ld. Trial Court failed to appreciate the circumstances prevailing at the time of execution and subsequent production of the Will. The plaintiffs were minors at the relevant time and their mother, who was stated to be illiterate, had undertaken the revenue proceedings. The circumstances relating to the manner in which the Will came to be disclosed and the revenue entries came to be made were matters requiring evidence and could not have been used for conclusively rejecting their prima facie case.
- 4.6. Ld. Trial Court also erred in relying upon the proceedings and observations made in the earlier Regular Civil Suit No.534 of 1997. The genuineness of the Will was not finally adjudicated in the said proceedings and, therefore, the observations made therein could not have been treated as conclusive against the plaintiffs in the present

proceedings, particularly when the order passed therein was itself under challenge in appeal.

- 4.7.** Defendant No.2 had instituted Special Civil Suit No.451 of 1991 with knowledge of the existence of the Will and the dispute relating thereto, but did not initially seek any substantive relief for cancellation or declaration against the Will. The subsequent attempt of defendant No.2 to challenge the Will by way of amendment, after a considerable lapse of time, was material for considering her conduct and prima facie entitlement. The plaintiffs have also invoked the principles underlying Order II Rule 2 of the Code of Civil Procedure.
- 4.8.** Defendant No.1 is a subsequent purchaser claiming through defendant No.2 and, therefore, cannot claim a better title or raise a defence beyond the rights available to defendant No.2. The plaintiffs submit that the subsequent alienation in favour of defendant No.1, during pendency of the earlier litigation, was itself a circumstance warranting preservation of the suit property and protection against further alienation.
- 4.9.** The plaintiffs have challenged the reliance placed by the Ld. Trial Court upon the handwriting expert's report. The report was based on photocopies, was obtained after several decades and had not been produced during the earlier proceedings despite the alleged challenge to the Will having existed for a long period. The said report could not have been treated as sufficient material for rejecting the plaintiffs' prima facie case at the interlocutory stage.

- 4.10.** The Ld. Trial Court has virtually accepted the defence case that deceased Makanbhai Valabhai died intestate and that defendant No.2 acquired an undivided share in the suit property. Such questions relate directly to the title and succession rights of the parties and could not have been conclusively decided while considering Exh.5.
- 4.11.** The plaintiffs have also relied upon the mutation proceedings and the revenue record, particularly Mutation Entry No.141 dated 22.11.1960, contending that the names of the plaintiffs had been entered in the revenue record pursuant to the Will and had continued for several decades. The Ld. Trial Court failed to give due consideration to such long-standing entries and to the fact that the plaintiffs were minors when the relevant proceedings were undertaken by their mother.
- 4.12.** The Ld. Trial Court failed to examine the effect of the succession laws applicable at the relevant points of time, including the death of the predecessors of defendant No.2, and prematurely proceeded on the basis that defendant No.2 had acquired an undivided one-half share in the suit property.
- 4.13.** The plaintiffs have also challenged the finding that no irreparable injury would be caused to them by refusal of temporary injunction. The subject matter is agricultural land and that permitting further alienation would seriously prejudice the plaintiffs' alleged proprietary and possessory rights. Successive transfers during pendency of the litigation would create third-party rights and result in multiplicity of proceedings.

- 4.14.** The Ld. Trial Court ought to have considered the principles of *lis pendens* and the effect of the transfer made by defendant No.2 in favour of defendant No.1 during pendency of the earlier litigation. If the validity of the existing transaction was not finally adjudicated at the stage of Exh.5, the defendants ought at least to have been restrained from creating further third-party rights pending final adjudication.
- 4.15.** Ld. Trial Court failed to properly apply the three settled requirements for grant of temporary injunction, namely, existence of a *prima facie* case, balance of convenience and likelihood of irreparable injury. Instead of examining these parameters, the Ld. Trial Court entered into an elaborate consideration of the merits of the title dispute and the validity of the Will.
- 4.16.** Ld. Trial Court failed to properly appreciate the judgments relied upon by the plaintiffs concerning subsequent purchasers and pendency of litigation. The said authorities supported their contention that subsequent transactions during pendency of litigation ought not to be permitted to complicate the proceedings and give rise to multiplicity of litigation.
- 4.17.** Defendant No.2 had allegedly questioned the Will for several decades but had not sought substantive relief for cancellation thereof for a prolonged period. Such delay, was a relevant circumstance which ought to have been considered while assessing the *prima facie* case and conduct of the parties.
- 4.18.** On the aforesaid grounds, the plaintiffs have contended

that the impugned order below Exh.5 suffers from material irregularity, erroneous appreciation of the pleadings and documents, premature adjudication of disputed questions of title and failure to apply the settled principles governing temporary injunction.

5. Submissions:

5.1. The Ld. Advocate for the plaintiffs, in his written arguments, submitted that the Ld. Trial Court has materially erred in rejecting the application for temporary injunction filed by the plaintiffs. It was submitted that the subject matter of the suit consists of agricultural lands bearing New Revenue Survey Nos. 432 of Village Abhva, which admittedly originally belonged to deceased Makanbhai Valabhai as his self-acquired property. According to the Ld. Advocate, deceased Makanbhai Valabhai executed a Will dated 22.03.1954 in a sound and disposing state of mind, whereby the suit properties and other properties were bequeathed exclusively in favour of the plaintiffs, and consequently the plaintiffs became the exclusive owners thereof.

5.2. It was further submitted that the execution and existence of the Will cannot be brushed aside merely on the ground that the plaintiffs were minors at the relevant time. The revenue record itself contains material demonstrating that the Will was in existence and was relied upon by the plaintiffs' mother and other concerned persons. In particular, Mutation Entry No.141 was entered pursuant to proceedings before the revenue authorities, whereby

the names of the plaintiffs came to be recorded in respect of the suit property. The plaintiffs' mother, being the guardian of the plaintiffs, had made applications before the revenue authorities referring to the Will and had produced a copy thereof. Thus, the revenue record substantially corroborates the plaintiffs' case regarding the existence of the Will.

5.3. It is submitted that the subsequent conduct and documents of defendant No.2 also demonstrate that defendant No.2 had knowledge of the Will much prior to the institution of the present proceedings. Defendant No.2 had raised objections before the revenue authorities and had participated in the proceedings concerning Mutation Entry No.141. It is submitted that the revenue proceedings, including RTS Appeal Nos.1/1968 and 2/1968, contain reference to the Will and establish that defendant No.2 was aware of the Will. Therefore, the contention that the Will was subsequently fabricated is wholly untenable.

5.4. The Ld. Advocate for the plaintiffs further submitted that the Ld. Trial Court committed an error in placing reliance upon the pleadings filed by the plaintiffs in Special Civil Suit No.451 of 1991. It is submitted that, at the relevant time, the plaintiffs were minors and the Will was not within their personal knowledge. The plaintiffs subsequently came to know about the Will and, upon obtaining the relevant documents, took appropriate steps in the pending proceedings. Therefore, the omission to refer to the Will in the earlier written statement could not,

by itself, constitute a suspicious circumstance sufficient to disbelieve the Will.

- 5.5.** It is further submitted that the documentary evidence produced before the appellate Court establishes that the Will was not a subsequently created document. The applications and replies submitted before the revenue authorities in the years 1959 and 1960, the objections raised by defendant No.2 in 1967, and the proceedings before the revenue authorities in RTS Appeal Nos.1/1968 and 2/1968 all contain references to the Will. Thus, the Will was admittedly in existence and was being relied upon decades before the institution of the present suit.
- 5.6.** The Ld. Advocate for the plaintiffs further submitted that defendant No.2 herself had knowledge of the Will and had never challenged the same by filing an independent civil proceeding at the relevant time. On the contrary, defendant No.2 participated in the revenue proceedings concerning the Will. It was therefore argued that defendant No.2 cannot now contend that the Will was fabricated or subsequently brought into existence merely because the plaintiffs rely upon it in the present proceedings.
- 5.7.** It is also submitted that the Ld. Trial Court ought not to have treated the opinion of the handwriting expert as conclusive against the plaintiffs. The expert opinion was based upon photocopy/secondary material and, therefore, could not furnish a safe or conclusive basis for holding that the signature of deceased Makanbhai Valabhai on the Will was forged. The Ld. Advocate submitted that the

question regarding genuineness and due execution of the Will is ultimately a matter for trial and cannot be conclusively determined at the interlocutory stage.

- 5.8.** It is further submitted that the Ld. Trial Court failed to properly appreciate the plaintiffs' actual possession over the suit properties. The documentary material, including the pleadings in Special Civil Suit No.451 of 1991, demonstrates that the plaintiffs were in possession and enjoyment of the suit properties. There is no material showing that defendant No.2 was ever put in actual possession of the suit lands. Thus, the plaintiffs have a settled and established possession which deserves protection during the pendency of the suit.
- 5.9.** The Ld. Advocate for the plaintiffs submitted that defendant No.2, despite the pendency of the dispute concerning title to the suit property, executed registered sale deed dated 28.03.2011 in favour of defendant No.1 by purporting to sell her alleged undivided half share in the suit properties. According to the Ld. Advocate, at the time of such alienation, defendant No.2's alleged share itself was under adjudication in Special Civil Suit No.451 of 1991, and no final determination had been made declaring defendant No.2 to be the owner of any specific share in the suit property.
- 5.10.** It is therefore submitted that the alienation made by defendant No.2 in favour of defendant No.1 during the pendency of the title dispute creates a serious threat to the subject matter of the suit and may result in further complications and multiplicity of proceedings. The

plaintiffs have specifically sought an injunction restraining the defendants from further transferring, alienating, assigning or creating third-party rights in respect of the suit properties or disturbing the possession thereof until final adjudication of the dispute.

- 5.11.** The Ld. Advocate for the plaintiffs further submitted that the Ld. Trial Court ought to have appreciated the object of Order 39 Rule 1 of the Code of Civil Procedure, which is to preserve the subject matter of the litigation and prevent the parties from altering the nature or status of the property during the pendency of the proceedings. Where title and possession are seriously disputed and the rights of the parties are yet to be finally adjudicated, preservation of the status quo is necessary to ensure that the ultimate decree does not become ineffective or difficult to execute.
- 5.12.** Reliance was placed upon the decision reported in AIR 2005 SC 104, wherein the Hon'ble Supreme Court has emphasized that ordinarily the Court should not permit alteration of the status or nature of the property during the pendency of litigation, including alienation or transfer thereof, particularly where such transfer may result in loss or damage to the party who ultimately succeeds and may give rise to multiplicity of proceedings. It was submitted that the principle laid down therein squarely applies to the facts of the present case.
- 5.13.** Reliance was also placed upon the decision reported in 1983 (2) GLR 961, wherein it has been held that where the property which is the subject matter of litigation is

transferred during the pendency of the proceedings, the Court should lean in favour of preventing multiplicity of proceedings and ensuring that the litigation proceeds effectively between the parties already on record. According to the Ld. Advocate, the said principle supports the grant of an interim injunction in the present case.

- 5.14.** It is further submitted that the fact that the plaintiffs are already in possession of the suit property is itself a significant circumstance in favour of maintaining the existing position. If defendant No.1 is permitted to further alienate the property or create third-party rights, persons having no connection with the original dispute may enter the litigation, thereby unnecessarily complicating and delaying the adjudication. Such a situation ought to be prevented by an appropriate order of injunction.
- 5.15.** The Ld. Advocate for the plaintiffs submitted that the Ld. Trial Court, while refusing injunction, proceeded primarily on the basis that the Will appeared suspicious and that defendant No.2 had an apparent undivided share in the suit properties. However, according to the plaintiffs, such findings are provisional in nature and cannot amount to a final adjudication of title. The very fact that the question whether the plaintiffs are exclusive owners under the Will or whether defendant No.2 has an undivided share is pending adjudication demonstrates the necessity of preserving the property until the rights of the parties are finally determined.

- 5.16.** It is further submitted that even assuming, for the sake of argument, that the plaintiffs' claim of exclusive ownership under the Will is yet to be finally established, the defendants ought not to be permitted to alter the position of the suit property by creating further third-party rights. The appropriate course would be to maintain the status quo with respect to title, possession and alienation until the substantive dispute is finally decided.
- 5.17.** The Ld. Advocate for the plaintiffs further submitted that the subsequent sale in favour of defendant No.1 constitutes a material change in circumstances when compared with the earlier proceedings, including the proceedings in respect of the injunction application in Special Civil Suit No.534 of 1997. The said earlier order was passed before the sale deed in favour of defendant No.1 came into existence. Therefore, the rejection of injunction in the earlier proceedings cannot operate as a bar to consideration of the present application in the changed circumstances.
- 5.18.** It is lastly submitted that the three essential requirements for grant of temporary injunction, namely, prima facie case, balance of convenience and irreparable injury, stand satisfied in favour of the plaintiffs. The plaintiffs have established a substantial prima facie case on the basis of the Will, the revenue proceedings and their longstanding possession. The balance of convenience lies in preserving the existing position, whereas permitting further alienation would expose the plaintiffs to serious complications and multiplicity of proceedings. The injury

likely to be caused to the plaintiffs by creation of third-party rights cannot be adequately compensated merely in terms of money. On the aforesaid grounds, the Ld. Advocate for the plaintiffs submitted that the impugned order passed by the Ld. Trial Court rejecting the plaintiffs' application for temporary injunction suffers from material irregularity and improper exercise of jurisdiction. It was therefore urged that the present Misc. Civil Appeal be allowed, the impugned order be set aside and the defendants be restrained from alienating, transferring, assigning or creating any third-party rights in the suit properties and from disturbing the plaintiffs' possession thereof during the pendency of the suit.

5.19. The Ld. Advocate for defendant No.1, in his written arguments, submitted that the present Misc. Civil Appeal is devoid of merits and has been preferred against a well-reasoned order passed by the Ld. Trial Court rejecting the application for temporary injunction filed by the plaintiffs. It was submitted that the plaintiffs have failed to establish any prima facie right, title or interest over the suit properties so as to justify grant of an interim injunction in their favour.

5.20. It is submitted that the entire claim of the plaintiffs is founded upon the alleged Will dated 22.03.1954 said to have been executed by the deceased Makanbhai Valabhai. However, the genuineness and due execution of the said Will are seriously disputed. The plaintiffs have failed to establish, even prima facie, that the alleged Will was duly executed by deceased Makanbhai Valabhai or that the

signature appearing thereon is his genuine signature. The Ld. Trial Court has rightly noticed several suspicious circumstances surrounding the alleged Will.

5.21. The Ld. Advocate submitted that after the death of Makanbhai Valabhai, Mutation Entry No.76 was entered in the revenue record on the basis of succession, wherein the names of the widow Benaben and daughter Ratuben were entered. Significantly, the said entry did not refer to the alleged Will. If Makanbhai Valabhai had in fact executed a Will in favour of the plaintiffs, there was no reason why the same would not have been disclosed or acted upon immediately after his death. The absence of any reference to the alleged Will in the initial succession proceedings is a material circumstance creating serious doubt regarding its genuineness.

5.22. It is further submitted that the plaintiffs themselves, in their written statement filed in Special Civil Suit No.451 of 1991, did not initially plead that the suit properties belonged to Makanbhai Valabhai or that Makanbhai Valabhai had bequeathed the same to the plaintiffs by a Will. On the contrary, the plaintiffs had taken the specific stand that the suit properties did not belong to Makanbhai Valabhai. Only subsequently, by seeking amendment of their written statement, did the plaintiffs introduce the case regarding the alleged Will. Such inconsistent stands taken by the plaintiffs in earlier proceedings constitute a strong suspicious circumstance against the genuineness of the alleged Will.

- 5.23.** The Ld. Advocate submitted that the explanation offered by the plaintiffs that they were minors when the relevant revenue proceedings took place and, therefore, were unaware of the Will cannot be accepted. The mother of the plaintiffs, Ratuben, was an adult and had admittedly participated in the revenue proceedings. If the alleged Will was genuine and was within the knowledge of the plaintiffs' mother, there was no plausible reason for the plaintiffs' side not to disclose the same in the proceedings in Special Civil Suit No.451 of 1991. The subsequent introduction of the Will, therefore, rightly raised a serious doubt regarding its authenticity.
- 5.24.** It is further submitted that the alleged Will is also surrounded by circumstances relating to its execution and signature which require strict scrutiny. A handwriting expert's opinion was produced on behalf of defendant No.2, wherein the signature attributed to deceased Makanbhai Valabhai on the alleged Will was opined not to be his genuine signature. Though such opinion may ultimately be evaluated at the stage of trial, it constitutes relevant material at the interlocutory stage for considering whether the plaintiffs have established a strong prima facie case.
- 5.25.** The Ld. Advocate submitted that the plaintiffs had an opportunity in earlier proceedings to establish the genuineness of the Will by examining the attesting witnesses, but they failed to do so. In the proceedings concerning the injunction application in Regular Civil Suit No.534 of 1997, the issue regarding the genuineness

of the Will had arisen and the plaintiffs had not examined the attesting witnesses to establish its execution. The plaintiffs' subsequent affidavit merely stated that the attesting witnesses had died, without specifying when they had died or placing satisfactory material regarding their non-availability. Such conduct further strengthens the circumstances of suspicion surrounding the alleged Will.

5.26. It is submitted that the Ld. Trial Court has rightly considered the cumulative effect of all these circumstances rather than examining the alleged Will in isolation. The plaintiffs cannot claim exclusive ownership of the suit properties merely on the basis of a disputed and suspicious document, particularly when the question of title is itself pending adjudication in the substantive proceedings.

5.27. The Ld. Advocate further submitted that, in the absence of a valid Will, the succession to the estate of Makanbhai Valabhai is required to be considered under the law applicable at the time of his death. Makanbhai Valabhai died prior to the commencement of the Hindu Succession Act, 1956, and his widow Benaben was alive at that time. Under the then applicable Hindu law, a limited interest accrued in favour of Benaben. Upon commencement of the Hindu Succession Act, 1956, such limited estate stood enlarged into an absolute estate by virtue of Section 14 of the said Act. Upon the subsequent intestate death of Benaben, her property devolved upon her heirs in accordance with Section 15 of the Hindu Succession Act.

- 5.28.** It was therefore submitted that, in the absence of establishment of the alleged Will, defendant No.2 has a substantial claim to an undivided share in the suit properties. The Ld. Trial Court has, therefore, rightly observed that the plaintiffs and defendant No.2 have, prima facie, equal shares in the suit properties. Consequently, the plaintiffs cannot claim an injunction restraining defendant No.2 from dealing with her undivided share in the property.
- 5.29.** The Ld. Advocate further submitted that defendant No.2 has not transferred any property belonging exclusively to the plaintiffs. Defendant No.2 has transferred her alleged undivided share in the suit properties to defendant No.1 under registered sale deeds dated 28.03.2011. Defendant No.1 has acquired the interest of defendant No.2 under a registered instrument and is, therefore, entitled to protect the rights flowing from such a transaction.
- 5.30.** It is specifically contended that the sale transaction cannot be characterized as a transfer of a mere chance of succession or spes successionis. Defendant No.2 has not transferred an uncertain future inheritance; rather, she has asserted an existing undivided share in the suit properties and has transferred the same to defendant No.1. Therefore, Section 6(a) of the Transfer of Property Act has no application to the transaction.
- 5.31.** It is further submitted that the contention of the plaintiffs that the sale deeds merely transfer a right to sue is also misconceived. The registered sale deed does not purport to transfer merely a right to institute litigation. Defendant

No.2 has transferred her asserted undivided share in the suit properties. There is no material on record to establish that the transaction was sham, nominal or entered into merely for creating a right to sue. Consequently, Section 6(e) of the Transfer of Property Act is also not attracted.

5.32. The Ld. Advocate submitted that a co-owner is legally competent to transfer his or her undivided share in joint property. Such transfer does not, by itself, render the transaction illegal merely because the property has not been partitioned by metes and bounds. Therefore, the mere pendency of a dispute regarding the precise share of defendant No.2 cannot furnish a ground to restrain her from transferring her undivided interest.

5.33. It is further submitted that the sale deeds themselves disclose that litigation concerning the suit properties was pending. Thus, defendant No.1 acquired the property with knowledge of the pending litigation and the transaction would necessarily remain subject to the result of the pending proceedings. The plaintiffs, therefore, cannot demonstrate any irreparable prejudice merely on account of the sale in favour of defendant No.1.

5.34. The Ld. Advocate submitted that the plaintiffs have also failed to establish the necessary ingredients for grant of temporary injunction. The first and foremost requirement of a prima facie case is not satisfied because the plaintiffs' exclusive title rests upon a disputed and suspicious Will. Once the plaintiffs fail to establish a prima facie case, the question of balance of convenience or irreparable injury cannot be considered in their favour.

- 5.35.** It is submitted that the balance of convenience is also not in favour of the plaintiffs. The plaintiffs are admittedly in possession of the suit properties and there is no material demonstrating that defendant No.1 has sought to dispossess them forcibly. Therefore, refusal of temporary injunction would not cause any immediate or irreparable prejudice to the plaintiffs. On the other hand, restraining defendant No.1 from dealing with the interest lawfully acquired by him would cause prejudice to his proprietary rights.
- 5.36.** It is further submitted that the plaintiffs have not established any injury which cannot be compensated in terms of money. The suit properties continue to be subject to the adjudication of the substantive suit, and any rights acquired by defendant No.1 would remain subject to the final outcome of the litigation. Hence, the apprehension of the plaintiffs regarding multiplicity of proceedings or prejudice is speculative and cannot constitute irreparable injury.
- 5.37.** The Ld. Advocate further submitted that the principle of *lis pendens* under Section 52 of the Transfer of Property Act sufficiently protects the rights of the plaintiffs during the pendency of the substantive litigation. Since defendant No.1 is bound by the result of the pending proceedings, the plaintiffs cannot claim that the sale transaction would defeat their substantive rights. Therefore, there is no necessity for granting the sweeping injunction sought by the plaintiffs.

- 5.38.** It was also submitted that the decisions relied upon by the plaintiffs concerning preservation of status quo and prevention of multiplicity of proceedings are distinguishable on facts. Such decisions do not lay down an absolute proposition that an injunction must invariably be granted whenever the property involved in litigation is alienated. The Court is required to examine the existence of a prima facie case, balance of convenience and irreparable injury in the facts of each case.
- 5.39.** The Ld. Advocate submitted that the Ld. Trial Court has carefully considered the pleadings, documentary evidence, previous litigation between the parties, the circumstances surrounding the alleged Will, the nature of the rights claimed by defendant No.2 and the subsequent sale in favour of defendant No.1. The conclusion reached by the Ld. Trial Court is based upon proper appreciation of the material available on record and does not call for interference in appellate jurisdiction.
- 5.40.** It was lastly submitted that the appellate Court, while considering an appeal against an interlocutory order, ought not to substitute its discretion merely because another view is possible. Unless the discretion exercised by the Ld. Trial Court is shown to be arbitrary, capricious, perverse or contrary to settled principles governing temporary injunctions, appellate interference is not warranted.
- 5.41.** On the aforesaid grounds, the Ld. Advocate for defendant No.1 submitted that the plaintiffs have failed to establish any prima facie case, balance of convenience or

irreparable injury in their favour. The Ld. Trial Court has rightly rejected the application for temporary injunction. It was, therefore, prayed that the present Misc. Civil Appeal be dismissed and the impugned order passed by the Ld. Trial Court be confirmed, with costs.

5.42. Initially the defendant No.2 appeared through her Ld. Advocate, but, after her death, though the legal heirs have been served with the notice did not appear.

6. From the rival contentions, following points arise for the determination of the present appeal:-

Sr. No.	Points of Determination
01	Whether the plaintiff has established a prima facie case for grant of temporary injunction in respect of the suit property?
02	Whether the balance of convenience lies in favour of the plaintiff?
03	Whether the plaintiff is likely to suffer irreparable loss or injury if the temporary injunction is refused pending disposal of the suit?
04	Whether the impugned order dated 23.10.2015 passed below Exh.5 in Sp. Civil Suit No.171 of 2014 suffers from any illegality, perversity, arbitrariness, or material irregularity warranting interference by this Appellate Court?
05	What order?

7. My findings on the above points are as under:Sr.

Sr. No.	Findings
------------	----------

01	In the Negative.
02	In the Negative.
03	In the Negative.
04	In the Negative.
05	As per final order.

8. Findings and Analysis:

8.1. The rival submissions of the Ld. Advocates for the plaintiffs and defendant side, the pleadings of the parties, the documents produced on record and the reasons recorded by the Ld. Trial Court have been carefully considered. The principal question which arises for consideration in the present Misc. Civil Appeal is whether the plaintiffs have made out a case warranting interference with the discretionary order passed by the Ld. Trial Court refusing to grant the interim injunction prayed for by them.

8.2. At the outset, it is required to be borne in mind that the suit property admittedly originally belonged to deceased Makanbhai Valabhai. The plaintiffs claim exclusive ownership over the suit property on the basis of the Will allegedly executed by Makanbhai Valabhai on 22.03.1954, whereas defendant No.2 asserts her right to an undivided share in the suit property and, on that basis, has executed a registered sale deed in favour of defendant No.1. Thus, the very question as to whether the plaintiffs have acquired exclusive title under the Will or whether defendant No.2 has inherited an undivided share in the suit property is a matter which requires adjudication in

the substantive proceedings.

- 8.3.** The Ld. Trial Court, upon considering the material produced before it, has found the Will relied upon by the plaintiffs to be surrounded by several suspicious circumstances. The Ld. Trial Court has, inter alia, considered the conduct of the plaintiffs in the earlier proceedings being Special Civil Suit No.451 of 1991, wherein the plaintiffs had initially not referred to the alleged Will and had, rather, disputed the ownership of Mankanbhai Valabhai over the suit property. The Ld. Trial Court has also considered the material relating to the revenue proceedings, the report/opinion of the handwriting expert and the circumstances concerning the attesting witnesses of the Will. On such consideration, the Ld. Trial Court has held that, at the interlocutory stage, the plaintiffs have failed to establish a prima facie case of exclusive ownership.
- 8.4.** It is well settled that while considering an application for temporary injunction, the Court is required to examine three essential requirements, namely, prima facie case, balance of convenience and irreparable injury. The existence of a prima facie case by itself does not automatically entitle a party to an injunction. The Court is required to consider all three requirements cumulatively.
- 8.5.** In *Dalpat Kumar v. Prahlad Singh*, (1992) 1 SCC 719, the Hon'ble Supreme Court has held that the existence of a prima facie case is not sufficient by itself for grant of injunction and that the Court must further satisfy itself regarding balance of convenience and irreparable injury.

The Hon'ble Supreme Court has also explained that a prima facie case means a substantial question requiring investigation and adjudication at trial and not necessarily a finding in favour of the plaintiff on merits.

- 8.6.** Similarly, in *Wander Ltd. v. Antox India (P) Ltd.*, 1990 Supp SCC 727, the Hon'ble Supreme Court has reiterated that grant of interlocutory injunction is an exercise of judicial discretion and that the appellate Court should not ordinarily interfere with the exercise of discretion by the Court of first instance unless the discretion has been exercised arbitrarily, capriciously, perversely or contrary to settled principles of law.
- 8.7.** In the present case, the reasons assigned by the Ld. Trial Court cannot be said to be arbitrary, perverse or contrary to the settled principles governing grant of temporary injunction. The Ld. Trial Court has considered the material available on record and has recorded a reasoned finding that the plaintiffs have not established a clear prima facie case of exclusive title.
- 8.8.** It is also required to be observed that, while considering the application for temporary injunction, the Ld. Trial Court has made certain observations touching upon the genuineness and validity of the Will dated 22.03.1954 and has prima facie observed that the said Will is surrounded by suspicious circumstances. In the considered opinion of this Court, such an observation, to the extent that it tends to express a concluded or adverse opinion regarding the genuineness of the Will, was not warranted at the interlocutory stage. The validity,

genuineness and legal effect of the said Will constitute substantive questions directly connected with the title of the parties and are admittedly sub judice in the pending proceedings between the parties. Such questions are required to be determined only after appreciation of the entire oral and documentary evidence, including the evidence relating to execution and attestation of the Will, the revenue entries, the conduct of the parties and other surrounding circumstances. At the stage of deciding an application for temporary injunction, the Court is required to form only a prima facie view for the limited purpose of determining whether interim protection is warranted, without recording findings which may prejudice the final adjudication of the rights of the parties. Therefore, the observations made by the Ld. Trial Court regarding the genuineness of the Will shall be treated only as prima facie observations for the purpose of disposal of the interlocutory application and shall not influence or prejudice the Ld. Trial Court while deciding the suit on merits. The Ld. Trial Court shall independently adjudicate the issue regarding the validity, genuineness and legal effect of the Will on the basis of the evidence that may be led by the parties and in accordance with law.

- 8.9.** There is another significant circumstance which weighs against granting the relief sought by the plaintiffs at this stage. Defendant No.2 had herself instituted Special Civil Suit No.451 of 1991 seeking her alleged share in the suit property and had obtained an order of injunction against the plaintiffs therein. Thus, defendant No.2 has, on the

one hand, been pursuing her claim for partition and her alleged share in the suit property, whereas, on the other hand, during the pendency of such dispute, she has executed a registered sale deed in favour of defendant No.1 in respect of her alleged undivided share. The conduct of defendant No.2 is therefore also required to be considered in the context of the pending litigation and the rights ultimately to be adjudicated by the competent Court.

8.10. However, the fact that defendant No.2 has executed the sale deed in favour of defendant No.1 does not, by itself, furnish a sufficient ground for granting the injunction sought by the plaintiffs. The validity and legal effect of the said transaction can ultimately be determined in accordance with the rights of the parties as adjudicated in the pending substantive proceedings.

8.11. Moreover, the present suit itself has been pending since the year 2014, and despite the execution of the sale deed in favour of defendant No.1, there is no material on record to show that the suit property has thereafter changed hands or that defendant No.1 has created further third-party rights in the property. In these circumstances, at this advanced stage of the litigation, it would not be appropriate to grant an injunction merely on the apprehension of a possible future transaction, particularly when the property has remained in the same hands since the transaction is already under challenge.

8.12. The principle governing interlocutory relief is that the Court should preserve the subject matter of the litigation

and prevent its alteration where such alteration is likely to prejudice the ultimate relief. At the same time, an injunction cannot be granted merely as a matter of course when the essential requirements for such relief are not established.

- 8.13.** In *Maharwal Khewaji Trust (Regd.) v. Baldev Dass*, (2004) 8 SCC 488, the Hon'ble Supreme Court emphasised the importance of preserving the subject matter of litigation and observed that, ordinarily, during the pendency of the suit, the property which is the subject matter of litigation ought not to be permitted to be alienated or its nature changed in a manner which may prejudice the successful party or lead to multiplicity of proceedings.
- 8.14.** Likewise, in *M. Gurudas v. Rasaranjan*, (2006) 8 SCC 367, the Hon'ble Supreme Court reiterated that the Court, while considering temporary injunction, is required to balance the competing possibilities and examine prima facie case, balance of convenience and irreparable injury in their proper perspective.
- 8.15.** At the same time, the peculiar circumstances of the present case do not justify granting an injunction in the terms prayed for by the plaintiffs. The dispute between the parties is not of recent origin. The litigation concerning the rights in the suit property has been pending since 1991, and the present suit was instituted in 2014. Thus, the parties have been litigating over the property for several decades and multiple proceedings are pending between them. In such circumstances, granting

an extensive injunction at this stage may not resolve the underlying dispute but may further complicate the proceedings.

8.16. The subsequent conduct of defendant No.2 also requires consideration. Defendant No.2 is claiming an undivided share in the suit property and has already transferred the said alleged share to defendant No.1. If the plaintiffs ultimately succeed in establishing their exclusive title, the legal consequences of such finding can be worked out in the substantive suit. Conversely, if defendant No.2 succeeds in establishing her share, the rights flowing from the transaction in favour of defendant No.1 can also be determined in accordance with law. Therefore, the rights of the parties should not be finally prejudged at the interlocutory stage.

8.17. It is also pertinent to observe that the sale deed executed by defendant No.2 in favour of defendant No.1 itself records the existence of litigation concerning the suit property. Therefore, defendant No.1 cannot claim to have acquired the property without notice of the pending dispute. The transaction would necessarily remain subject to the result of the pending litigation and the doctrine embodied in Section 52 of the Transfer of Property Act, 1882, namely, the doctrine of *lis pendens*. The Hon'ble Supreme Court in *Jayaram Mudaliar v. Ayyaswami*, (1972) 2 SCC 200, has explained the underlying object of Section 52 of the Transfer of Property Act as being to prevent the subject matter of litigation from being transferred so as to prejudice the rights of the parties

under the decree ultimately passed.

- 8.18.** Therefore, the apprehension of the plaintiffs that the execution of the sale deed in favour of defendant No.1 would, by itself, render the ultimate adjudication ineffective cannot be accepted. Defendant No.1, having purchased the property during the pendency of litigation with knowledge thereof, would remain bound by the ultimate outcome of the proceedings.
- 8.19.** At the same time, this Court is of the considered view that it would be desirable and in the interest of justice that the parties maintain the suit property in its existing condition and refrain from creating further complications in respect thereof during the pendency of the proceedings. Such direction is not being issued on the basis that the plaintiffs have established their title, but with a view to preserving the subject matter of the litigation and avoiding further multiplicity of proceedings.
- 8.20.** The principle that the Court should endeavour to prevent multiplicity of proceedings has also been recognised by the Hon'ble Supreme Court in *Dalpat Kumar v. Prahlad Singh* (supra) and *Maharwal Khewaji Trust (Regd.) v. Baldev Dass* (supra). However, such a principle has to be applied keeping in view the facts and circumstances of each case and cannot be treated as an independent ground for granting injunction when the plaintiffs fail to satisfy the requirements for such relief.
- 8.21.** So far as the balance of convenience is concerned, the plaintiffs are admittedly in possession of the suit property, as noticed by the Ld. Trial Court. There is no

material showing that defendant No.1 has obtained possession of the suit property pursuant to the sale deed or that the plaintiffs are presently being dispossessed. Consequently, the plaintiffs' existing possession is not shown to be under any immediate threat. In such circumstances, the balance of convenience does not warrant the grant of the wide injunction sought by the plaintiffs.

8.22. Similarly, the requirement of irreparable injury is also not established. If ultimately the plaintiffs succeed in establishing their exclusive title, the rights of defendant No.1 under the impugned sale transaction can be adjudicated in accordance with law. Further, the transaction itself is subject to the outcome of the pending proceedings. Therefore, the plaintiffs have failed to demonstrate that refusal of the interim injunction would cause them an injury which cannot be adequately protected by the final adjudication.

8.23. The reliance placed by the Ld. Advocate for the plaintiffs upon the judgment of the Hon'ble Supreme Court reported in AIR 2005 SC 104 also does not assist the plaintiffs in the facts of the present case. The said decision lays down the principle that ordinarily the status quo concerning the property should not be permitted to be altered during pendency of litigation, particularly where such alteration may result in prejudice to the successful party or multiplicity of proceedings. The said principle, in fact, supports the requirement that the subject matter should be preserved. However, it does not mean that an

injunction must necessarily be granted in every case irrespective of the failure of the plaintiff to establish prima facie case, balance of convenience and irreparable injury.

- 8.24.** The same principle has to be harmonised with the fact that the present litigation is already of considerable vintage. The property has not further changed hands after the transaction under challenge. Therefore, the immediate apprehension which could have justified an interim injunction at the initial stage of the litigation does not exist with the same force at this stage.
- 8.25.** It is further necessary to consider that multiple proceedings between the parties are pending since 1991. The dispute regarding the alleged share of defendant No.2, the validity and effect of the Will relied upon by the plaintiffs and the rights arising from the subsequent sale transaction are interconnected. Keeping such proceedings pending for an indefinite period may itself cause further prejudice to all concerned.
- 8.26.** In these circumstances, rather than granting the injunction prayed for by the plaintiffs, it would be in the larger interest of justice to direct expeditious adjudication of the substantive disputes. The Ld. Trial Court dealing with the present suit as well as Special Civil Suit No.451 of 1991 (now renumbered as RCS No. 700/2015, if applicable) shall make an endeavour to hear and dispose of the said proceedings as expeditiously as possible and preferably within a period of six months, subject to its docket and procedural requirements and without being influenced by

any observations made in the present order. The parties shall extend full cooperation to the Ld. Trial Court and shall not seek unnecessary adjournments.

8.27. It is clarified that the observations made herein are confined to the consideration of the present Misc. Civil Appeal and shall not prejudice the merits of the substantive suits. The Ld. Trial Court shall decide the suits independently on the basis of the evidence led before it and in accordance with law.

8.28. Upon an overall consideration of the pleadings, documentary material and the findings recorded by the Ld. Trial Court, this Court is of the opinion that the plaintiffs have failed to establish all the three essential ingredients for grant of temporary injunction. The plaintiffs have not been able to establish a clear prima facie case of exclusive ownership on the basis of the disputed Will, the balance of convenience does not lie in their favour, and no irreparable injury has been demonstrated which cannot be protected by the final adjudication.

8.29. The mere pendency of the title dispute and the execution of the sale deed by defendant No.2 in favour of defendant No.1 do not, in the peculiar facts of the present case, justify interference with the discretionary order passed by the Ld. Trial Court. The impugned order is a reasoned and possible view based upon the material available on record and does not suffer from any perversity, illegality or material irregularity warranting appellate interference.

8.30. At the same time, considering that the dispute between

the parties is pending since 1991 and the present proceedings are pending since 2014, and having regard to the existence of multiple connected proceedings, it is desirable to observe that the parties to maintain the suit property in its existing condition and not to create further complications or third-party rights therein, subject to their rights and contentions in the pending proceedings, so as to preserve the subject matter of litigation and avoid multiplicity of proceedings.

8.31. The Ld. Trial Court dealing with the present suit as well as the suit instituted in the year 1991 is further directed to make all endeavour to expedite the hearing and preferably dispose of the connected proceedings within six months, subject to the cooperation of the parties and the procedural requirements of law. The parties shall extend full cooperation and shall avoid unnecessary adjournments.

8.32. Accordingly, the Misc. Civil Appeal deserves to be dismissed, subject to the aforesaid directions.

9. Conclusion

9.1. In view of the foregoing discussion, this Court finds that the plaintiffs have failed to establish a prima facie case, balance of convenience and likelihood of irreparable injury warranting grant of temporary injunction. The Ld. Trial Court has, therefore, rightly exercised its discretion in rejecting the injunction application. At the same time, considering that defendant No.2 has been asserting her right to an undivided share in the suit property in the partition proceedings pending since 1991 and, during the

pendency of such dispute, has transferred the suit property in favour of defendant No.1, it is desirable that no further complications are created in respect of the suit property. The suit property has not thereafter changed hands and the present suit has remained pending since 2014. Therefore, at this stage, grant of the injunction prayed for by the plaintiffs is not warranted. Nevertheless, in order to preserve the subject matter of the litigation and to avoid multiplicity of proceedings, it is desirable that the parties may maintain the suit property in its existing condition and shall cooperate for expeditious adjudication of their respective rights. Considering the prolonged pendency of the dispute since 1991 and the pendency of multiple proceedings between the parties, the Ld. Trial Court dealing with the present suit as well as the suit arising from Special Civil Suit No.451 of 1991, now pending as Regular Civil Suit No.700 of 2015, shall make all endeavour to hear and dispose of the respective suits preferably within six months from the date of receipt of this order, subject to the convenience of the Court and its docket. The parties shall extend full cooperation and shall not seek unnecessary adjournments. It is clarified that the observations made herein are confined to the interlocutory proceedings and shall not prejudice the final adjudication of the substantive rights of the parties. Accordingly, the point Nos. 1 to 4 are answered in negative and the following order:

ORDER

1. The present Misc. Civil Appeal is hereby dismissed. The order passed by the Ld. Trial Court below the application for temporary injunction is hereby confirmed.
2. It is clarified that the observations made in the present order are confined to the adjudication of the application for interim injunction and shall not prejudice the rights and contentions of either party on the merits of the substantive suit. The Ld. Trial Court shall decide the suit independently on the basis of the evidence led before it and in accordance with law.
3. The sale transaction already executed by defendant No.2 in favour of defendant No.1 shall remain subject to the final outcome of the pending proceedings and the rights of the parties shall be governed by the final adjudication in accordance with law.
4. The Ld. Trial Court dealing with the present suit as well as Special Civil Suit No.451 of 1991 (and its present corresponding number RCS 700/2015) is directed to make all possible endeavour to expedite the hearing of both the proceedings and preferably dispose of the same within a period of six months from the date of receipt of this order, subject to the Court's docket, procedural requirements and cooperation of the parties.
5. The plaintiffs as well as defendant Nos.1 and 2 are directed to extend full cooperation to the Ld. Trial Court for expeditious disposal of the proceedings and shall not seek unnecessary adjournments. The Ld. Trial Court shall be at liberty to proceed in accordance with law in case any party

adopts delaying tactics.

6. It is clarified that the aforesaid direction for expeditious disposal shall not be construed as curtailing the right of either party to lead permissible evidence or make lawful submissions.
7. No order as to costs.
8. The Record and Proceedings, if received, be transmitted back to the concerned Ld. Trial Court forthwith, with the copy of this judgment and also the copy of this judgment be sent to the Ld. Trial Court who is trying RCS 700/2015.

Signed and pronounced in open Court today on this 10th day of August, 2026.

Date : 10-08-2026

Place : Surat

Self

(S. P. Mehta)

16th Additional District Judge,
Surat.

Unique ID : GJ00934