

(2022) 04 GUJ CK 0005

In the Gujarat High Court

Case No : R/Appeal From Order No. 138, 140 Of 2021, Civil Application (For Stay) No. 1 Of 2021

Harish Veljibhai Joshi Through Poa Darshan Harishbhai Joshi **APPELLANT**
Vs

Jitendra Veljibhai Joshi **RESPONDENT**

Date of Decision : 01-04-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section Order 39 Rule 1, Order 39, Rule 2, Order 41 Rule 5
Transfer Of Property Act, 1882 — Section 3, 44, 48, 79, 80 98(4)(d), 99

Citation : (2022) 04 GUJ CK 0005

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : SP Majmudar, Niyati B Katira, Shashvata U Shukla

Final Decision : Allowed/Disposed Of

Judgement

Dr. A. P. Thaker, J

1. Both these Appeals from Order are filed against impugned order below Exh-5 passed in Special Civil Suit No. 155/2021 by the Civil Judge (S.D.) at Vadodara dated 20.10.2021. Hence, both the matters were heard together.

2. The Appeal from Order No. 138 of 2021 is filed by the original defendant No.10 whereas Appeal from Order No. 140 of 2021 is filed by the original plaintiff.

3. The brief facts as emerged from the Appeal are as under:

3.1 The plaintiff has filed the aforesaid Special Civil Suit against the defendant No.10 and other family members of the plaintiff himself for a declaration and injunction stating that his right as an heir in the property bearing Plot No. 08 of Shri Harinagar Co-op. Housing Society and other consequential relief. Along with the Plaint, he has also filed Application below Exh-5 for injunction Application with a prayer that defendant No.10 may not make further construction over the plot in question and he may be restrained from creating any third party interest

in any manner whatsoever. According to the plaintiff, he is one of the legal heirs of Veljibhai Lakhamshibhai Joshi along with other defendants and has stated that Veljibhai Lakhamshibhai Joshi has died on 14.4.1982 and the Plaintiff's mother Pushpaben Joshi also died. That the property bearing Plot No. 8, of Shri Harinagar Co-operative Housing Society Ltd. situated at F.P. No. 270, T.P. Scheme No.2, consisting of Survey Nos. 184, 185 paiki, City Survey No.4 was belonging to deceased Veljibhai Lakhamshibhai Joshi and Jitendrabhai Veljibhai Joshi in the Society on and from 12.2.1976. It is a case of the plaintiff that his father as well as defendant No.2 Jitendrabhai Veljibhai Joshi being one of the heirs had suppressed the names of other heirs firstly in the year 1976 and secondly on 14.4.1982 when his father died. According to the plaintiff, Pedigree was made on 11.12.2014 in which there was no other name except two when the said transfer in the name of two persons were made in City Survey Record on 26.4.2014. According to the plaintiff, by suppressing name of other heirs, the defendant Nos. 1 to 9 have got entered their names as heirs in the revenue record and have sold the property to defendant No.10 Tatashtu Reality. According to the plaintiff, he has legal right as a heir in the suit property. According to the plaintiff, the defendant Nos. 1 to 8 have sold the property to defendant No.10 by registered sale-deed, which is not binding to him as it is against his right over the property as a legal heir. On all these grounds, he has filed the suit for declaration that he has undivided share in the suit property as a legal heirs and the sale-deed executed in favour of defendant No.10 is not binding to him and null and void ab-initio and the declaration that the defendant No.10 has no legal title over the property or over possession of the property as well as for removal of any of the construction if any and restraining the defendant No.10 from creating any right or transferring the property to any third party.

3.2 The suit has been resisted by defendant No.10 filed with requisite written statement and reply to the Exh-5 application. After hearing both the sides, learned Civil Judge passed the order in favour of the plaintiff restraining the defendant No.10 from making any further construction over the plot in question and / or making any change in the existing situation till 20.4.2022 and that the defendant No.10 shall not hand over any part from the plot in question to any third party in any manner whatsoever till 20.4.2022. It is further ordered by the learned Civil Judge that the said order shall remain in force till 20.4.2022 and will automatically come to an end thereafter.

4. According to defendant No.10 - appellant, he is the bonafide purchaser and he has paid huge amount. It is also contended that after getting title clearance certificate and after proper inquiry, it has purchased the land in question from defendant Nos. 1 to 8 by registered sale-deed and entry of sale deed is already mutated in the revenue record. It is also contended that it has also got appropriate permission for construction on the site and has already put up construction thereof. It is also contended that even the joint owners have also got title clearance certificate earlier. It is also contended that the plaintiff has filed the suit only with a view to get money from defendant No.10, who has

already borne huge expenses in purchasing the property and making construction there over. The main contention of the defendant No.10 is that he being the bonafide purchaser and has paid consideration to other defendants, whatever right available to the plaintiff can be compensated in terms of money and defendant No.10 may not be restrained from carrying on with its project of development.

4.1 The defendant has also filed application under Order 7 Rule 10 and on this ground it has contested the Suit as well as the interim injunction application.

5. Shri P.M.Bhatt, learned advocate for the appellant – original defendant No.10 has vehemently submitted that the defendant has purchased the land after obtaining title verification reports and the construction has already been started. He has also submitted that the Plots were belonging to brother and they have mutated their names in the City Survey Records. He has also submitted that prior to purchase of the land in question, a public notice was issued and no objection from any corner was received. He has also submitted that the defendant has also got title clearance certificate dated 13.7.2020. He has submitted that thereafter sale-deed was executed. He has also submitted that the defendant has got statutory development permission for the construction in question. He has submitted that the said permission is not challenged by anybody. According to him, the defendant is a bonafide purchaser. He has submitted that even if any alleged share of the plaintiff is existing against the private defendant, then for his small share in property, he can be compensated in terms of money. He has submitted that there is no irreparable injury likely to be caused to the plaintiff. He has submitted that the defendant is a bonafide purchaser and he has invested huge amount and there is already construction over the plots and, therefore, the trial Court ought not to have granted the interim injunction, even for a short duration. He has also submitted that the defendant has also moved an application for rejection of the Plaint. However, that application is not decided by the trial Court and the trial Court has not considered the various issues raised by the defendant in written statement. He has submitted that the exercise of the jurisdiction by the trial court in granting the interim relief, of course, for short duration is erroneous. He has submitted that the interim injunction filed by the plaintiff ought to have been dismissed by the trial Court. He has prayed to allow the Appeal from Order No. 138 of 2021 and to dismiss the Appeal from Order No. 140 of 2021 filed by the original plaintiff. Mr. Bhatt, learned advocate has relied upon the following decisions:

1. Rana Bharatsinh Jasubha v. Heirs of Valand Laljibhai Arjanbhai, reported in 2014 (2) GLR 1688;
2. Harshadkumar Kantilal Bhalodwala and Anr, reported in 2010 (1) GLH 151;
3. Komalkant F. Sharma and Anr. v. Mansukhbhai K. Shah, Trustee Khushaldas J. Mehta, Kshaynivarani Hospital, Vadodara & Ors, reported in 2014 (1) GLR 127;
4. Jhaverbhai Savjibhai Patel Thro' PoA Holder Ashok J. Patel v. Kanchanben

Nathubhai Patel & Ors., reported in 2005 (3) GLH 657;

5. Bhikhubhai Naranji Desai (Decd) by Heirs v. Chhotubhai Ranchhodji Desai (decd.) By heirs & Ors., reported in 2017 (4) GLR 3083.

6. Mr. S.P. Majmudar, learned advocate for the contesting respondent No.1 – original plaintiff has submitted that the plaintiff is a heir of Veljibhai. He has submitted that being an ancestral property, the plaintiff has a share in the property and the respondent No.1 to 9 have suppressed the facts of other heirs and got mutated their names in the revenue record. He has submitted that the other heirs of Veljibhai has not denied the fact that the plaintiff has share in the property. He has submitted that the sale-deed has been executed by the other respondent in favour of the contesting defendant but, the plaintiff has not executed such sale in favour of the contesting defendant. He has submitted that the nomination in the society would not affect the heirship of the succession right of the plaintiff. He has submitted that the alleged sale-transaction is not binding to the plaintiff and, therefore, the plaintiff has filed the Suit for cancellation of the sale deed. He has submitted that even under Section 3 of the Transfer of Property Act, it is deemed to the notice of the facts to the contesting defendant. He has also submitted that Section 48 of the Transfer of Property Act does not speak about the bonafide purchaser and Section 44 of the Transfer of Property Act is relating to joint possession. He has submitted that since the plaintiff has a right in the property as heir under the Hindu Succession Act, he can claim that right and it is statutory right as a co-owner of the property and, therefore, he has filed the Suit for cancellation of the sale-deed and for his share. He has submitted that if the property changes hands during the pendency of the Suit, then there will be multiplicity of proceedings and the Plaintiff will not be compensated in terms of money. He has submitted that the trial Court has granted the status-quo, however, with a condition that entire proceedings should be completed before the end of April, 2022 and thereafter the interim relief will stand automatically cancelled. He has submitted that under Order 39 Rule 1 & 2 of CPC such time bound order cannot be passed. He has submitted that the trial Court has committed error of law in prescribing the ultimate time limit and observing that on expiry of which injunction order will come to an end. He has submitted that the Appeal from Order filed by the original defendant be dismissed and the Appeal from Order filed by the respondent-plaintiff be allowed and the interim injunction be confirmed till the final disposal of the Suit instead of upto April, 2022. He has relied upon the following decisions:

1. Kantibhai Ishwarbhai Patel Through his heirs and legal Representatives v. Chandrakant Ishwarbhai Patel, reported in 2005 (3) GLR 2110;

2. Indrani Wahi v. Registrar of Cooperative Societies, reported in (2016) 6 SCC 440;

3. Sneha Gupta v. Devi Sarup, reported in (2009) 6 SCC 194;

4. Natwarlal Ranchhoddas Patel v. Harendrabhai Somjibhai Patel, reported in AIR

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5. Harikrushnadas Chhaganlal Nanalal and Ishwardas Mohanlal v. Vinodchandra G. Vaghela and the Maruti Cooperative Housing Society Ltd., Judgment dated 4.3.2021 passed by the Division Bench of this Court in LPA No. 999 of 2010 In SCA No. 9900 of 2003;

6. Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass, reported in (2004) 4 SCC 488;

7. Wander Ltd. And Another v. Antox India P. Ltd, reported in 1990 (Supp) SCC 727.

8. Nagalinga Nadar v. K. Mehrrunnisa Begum and Anr., Judgment of Madras High Court dated 13.9.1979 in Application No. 456 of 1975 and C.M.P. No. 9319 of 1978.

7. In the case of Rana Bharatsinh Jasubhai v. Heirs of Valand Laljibhai Arjanbhai (Supra), there was a case wherein property was left behind by a person who died and thereafter widow mother sold the property for legal necessity. The property was purchased by the appellant therein after examining revenue records wherein it was shown the property Suit in the name of mother and the appellant had purchased after paying adequate consideration. On that basis, the Court has held that the Appellant was the bonafide purchaser for value.

8. In the case of Harshadkumar Kantilal Bhalodwala and Anr (Supra), the Para-9 reads as under:

9. Now, so far as the decisions relied upon by the learned Ramdev Food Products (P) Ltd. (supra) and Wander Ltd. (supra) are concerned, even in the said decision also the Hon'ble Supreme Court has specifically observed that the Appellate Court can interfere with the order of the trial court when it is found that discretion has been exercised by the trial Court arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunction. As observed herein above, in the present case while granting the injunction the learned Judge has ignored the settled principles of law regulating grant or refusal of interlocutory injunction i.e. prima facie case, balance of convenience and irreparable loss in terms of money. There is no prima facie case in favour of the original plaintiff. As stated above defendants No. 3 and 4 are the bona fide purchaser of the land in question after payment of full sale consideration and after public advertisement/ notice and when no objections were received and, therefore, the balance of convenience is in favour of the defendants No. 3 and 4.

9. In the case of Komalkant F. Sharma and Anr. v. Mansukhbhai K. Shah, Trustee Khushaldas J. Mehta, Kshaynivanan Hospital, Vadodara & Ors (Supra), the Court has observed in Paras-8 and 9 as under:

"8. Recourse to justice is recourse to a civilized means. As soon as the court is

approached with a dispute or question, its very first duty is to do justice for justice by deciding whether the party or parties are entitled to justice in the context of whole relevant four corners of law. Thus, justice initially needs to be done and accordingly the court may continue or discontinue the proceedings. A situation may be, in great need of justice, but that itself is not enough to activate the judicial process, keeping the merits of the case aside. 8.1 In the legal system, the courts are created and entrusted with functions and responsibilities to administer justice and for that, are vested with necessary power and authority. But, in my view, the Court cannot be bestowed with the luxury of complete discretion in its functioning disregarding the essential characters of Order 39, Rule 1 and 2 or Order 41, Rule 5 of the Code of Civil Procedure, 1908 and also the purpose and responsibility. The Court is a Court having its own "judicial discipline" and striking the "judicial balance", it must perform its essential function. The Court as a Court of justice must not project itself as a Court of "no justice" by not entering into the merits of the case, when there are no good reasons as the parties have been heard at length on facts as well as law to decline justice at the threshold. The power, function and responsibility of the Court are inter-linked which limit the freedom of the Court whose commissions and omissions cannot just be suo moto or arbitrary. Considering the deficiency / short comings / conduct of both the sides, the Court has to decide on merits of the case that which way lies the truth; and the less dust there is about the better. A Judge is impartial administrator of law and the "Judicial Balance" is a mark of his authority and a source of respect to Judicial System. I am also of the view that justice needs to be thoroughly done throughout the whole proceedings in order to reach ultimately to the correct result. Any stage devoid of justice would make the whole judicial process defective and the final judgment or opinion would go wrong. Golden principles of justice need to be used as a means or instrumentality to achieve the end or objective of justice. Justice – objective needs to be achieved through justice way i.e. to decide the dispute entering into the merits of the case, more particularly, when the dispute be resolved or adjudicated upon after bipartite hearing. Why does justice carry a balance in her hand with lifted scales ? This is plain – simple. It needs no justification. The balances have always been the symbol of even-handed justice.

9. Thus, the Appellate Court is expected to discuss the merits of the matter, more particularly, when the entire documentary evidence has been forthcoming on the record and all the advocates for both the parties have been heard at length on facts as well as law. It is altogether a different thing that the order of the Joint Charity Commissioner may stand or fall. It goes without saying that if the order is good, it will stand and if the order is bad, it will fall. Under the circumstances, in my view, granting ad-interim injunction without entering into merits and without in any way looking at the three golden principles of the Code of Civil Procedure, 1908 is nothing but abuse of jurisdiction.

10. In the case of Jhaverbhai Savjibhai Patel Thro' PoA Holder Ashok J. Patel v. Kanchanben Nathubhai Patel & Ors. (Supra), it was held that it is incumbent on

the part of the revenue authority to make entry in the revenue record on the production of the registered document and validity of document can be adjudicated by competent authority.

11. In the case of Bhikhubhai Naranji Desai (Decd) by Heirs v. Chhotubhai Ranchhodji Desai (decd.) By heirs & Ors. (Supra), it has been held by this Court that revenue authority is required to go by registered sale-deed and give it effect in revenue record and they have no jurisdiction to decide the question of title in revenue proceedings.

12. In the case of Kantibhai Ishwarbhai Patel Through his heirs and legal Representatives v. Chandrakant Ishwarbhai Patel (Supra),

"29. It is settled proposition of law that the deceased father as a coparcener, could not have claimed any properties out of the suit properties as his self acquired properties or the properties exclusively owned by him because, he had inherited the suit properties from his father as an heir of the deceased grandfather of the plaintiff. Therefore, the suit properties were coparcenary properties in his hand. It is also an admitted position on record that the suit properties were never partitioned by metes and bounds during his life time. The suit properties were coparcenary properties in the hands of the father and, therefore, could not have bequeathed any of the suit properties by will.

31. Applying the principle laid down by the Supreme Court in above referred to judgement, to the facts of the present case, since no partition was effected during the lifetime of the deceased father, the deceased father could not have executed any will in respect of the suit properties because, the suit properties continued to be a coparcenary properties till his death.

32. While dealing with the question as to the right of the father to execute a will in respect of coparcenary properties, the Supreme Court in the case of Valliammi Achi v. Nagappa Chettiar (supra) has clearly held that; the father in Mitakshara family has very limited right to execute a will in respect of the coparcenary properties in the absence of partition; that the father has a right to execute a will in respect of his self-acquired properties, but he has no right to execute any will in respect of the ancestral properties in his hand.

33. The aforesaid judgement is also squarely applicable to the facts of the present case. Therefore, in aforesaid premises, it has to be deduced that the suit properties were ancestral properties at the hands of the deceased father which was never partitioned and he has no right to execute the will in favour of any of his three sons and, therefore, the plaintiff has a right in the suit properties to the extent of 1/4th + 1/20th share".

13. In the case of Indrani Wahi v. Registrar of Cooperative Societies (supra), Paras-22 and 23 read as under:

"22. Having recorded the above conclusion, it is imperative for us to deal with the conclusion recorded in paragraph 6 (already extracted above) of the

judgment of this Court in the Usha Ranjan Bhattacharjee case (supra). In this behalf, it is necessary to clarify that transfer of share or interest, based on a nomination under Section 79 in favour of the nominee, is with reference to the concerned Cooperative Society, and is binding on the said society. The Cooperative Society has no option whatsoever, except to transfer the membership in the name of the nominee, in consonance with Sections 79 and 80 of the 1983 Act (read with Rules 127 and 128 of the 1987 Rules). That, would have no relevance to the issue of title between the inheritors or successors to the property of the deceased.

23. Insofar as the present controversy is concerned, we therefore hereby direct 'the Cooperative Society' to transfer the share or interest of the society in favour of the appellant – Indrani Wahi. It shall however, be open to the other members of the family (presently only the son of Biswa Ranjan Sengupta – Dhruba Jyoti Sengupta; we are informed that his mother – Parul Sengupta has died), to pursue his case of succession or inheritance, if he is so advised, in consonance with law”.

14. In the case of Sneh Gupta v. Devi Sarup (Supra), it is held in para-27 as under:

“27. Title to a property must be determined in terms of the statutory provision. If by reason of the provisions of the Hindu Succession Act, 1956 the appellant herein had derived title to the property along with her brothers and sisters, she cannot be deprived thereof by reason of an agreement entered into by and between the original plaintiff and the contesting defendants. If a party furthermore relinquishes his or her right in a property, the same must be done by a registered instrument in terms of the provisions of Indian Registration Act”.

15. In the case of Natwarlal Ranchhoddas Patel v. Harendrabhai Somjibhai Patel (Supra), the Court has observed in Para-8.5 as under:

“8.5 As observed earlier, it is the indisputable fact that the entire property is undivided and partition between the original owners appears to have yet not taken place and in the circumstances, in the considered opinion of this Court, and as observed by the learned trial Judge, if the status quo qua the entire property is not granted, the original plaintiffs might have irreparable loss. Further, it is also a fact that an aggrieved party of the outcome of the suit, can very well take recourse to the remedy available to it under the law, and therefore, the present appeal merits no consideration”.

16. In the case of Harikrushnadas Chhaganlal Nanlal and Ishwardas Mohanlal v. Vinodchandra G. Vaghela and the Maruti Cooperative Housing Society Ltd. (Supra), Para-9 reads as under:

“9. The Lavad Suit filed in the present case under the Act of 1961 before the Board of Nominees is not at par with the Civil Suit in a competent Civil Court. Nor a Quasi-judicial Authority like the Registrar or his Nominees can have any

such power or be a substitute to a competent Civil Court even though they may enjoy some limited power of Civil Court, like summoning of witnesses etc. while adopting the procedure as given in Section 99 of the Act quoted above. Section 98(4)(d) of the Act enabling a party to claim all reliefs in respect of same cause of action does not extend any enabling power to the Registrar or Board of Nominees to grant relief of cancellation of Sale Deed as a consequential relief even if the questioned Resolution could be quashed by then”.

17. *Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass (Supra)*, it is observed in Para-10 as under:

“10. Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored. The appeal is allowed”.

18. In case of *Wander Ltd. And Another v. Antox India P. Ltd (supra)*, Paras-13 and 14 read as under:

“13. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised

arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. In (Mysore) Private Ltd. v. Pothan Joseph (AIR 1960 SC 1156):

... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

The appellate judgment does not seem to defer to this principle.

19. In the case of *Nagalinga Nadar v. K. Mehrrunnisa Begum and Anr.*, Judgment of Madras High Court dated 13.9.1979 (Supra), the Madras High Court has observed that Section 48 of the Transfer of property Act is founded upon the principle that no man can convey a better title than what he has. If a person had already effected a transfer, he cannot derogate from his grant and deal with the property free from the rights created under the earlier transaction. His prior title as absolute and free owner is curtailed or diminished by right already created under the earlier transaction. The Section is absolute and does not contain any protection or reservation in favour of a subsequent transferee who has no knowledge of the prior transfer. Knowledge or no knowledge, a subsequent transferee cannot claim any priority as against an earlier transferee.

20. It emerges from the record that dispute is regarding suit property bearing Revenue Survey No. 184 and 185 paikee, Plot No. 8 of Shri Harinagar Co-operative Housing Society Ltd. situated at F.P. No. 270. It appears that the suit property was transferred to Veljibhai Lakhamshibhai Joshi and Jitendrabhai Veljibhai Joshi in the year 1976. Veljibhai Joshi passed away without any Will on 14.4.1982. Thereafter, his wife also passed away. It appears that the plaintiff and defendant Nos. 1 to 9 are related and they are heirs of Veljibhai Lakhamshibhai Joshi. It appears that on the basis of the affidavit of defendant Nos. 1 to 8, their names were entered in the records of rights. It also appears that Mutation entries were entered in the revenue record bearing No.9910 and Mutation Entry No. 9993 in the year 2014 and 2015. It appears that the defendant No.10 has purchased the land by registered sale-deed from defendant Nos. 1 to 8 and Mutation entry No. 17727 dated 17.5.2021 came to be entered in the revenue

record, in accordance with the registered sale deed, in favour of defendant No.10. It appears that the same is under challenge by the plaintiff before Deputy Collector. It is the case of the plaintiff that he is one of the heirs of Veljibhai Lakhamshibhai Joshi and, therefore, he has a right over the property. According to him, the Mutation entry No. 9910 and 9993 of heirship, based upon the affidavit of defendant Nos. 1 to 8, are cancelled and new heirship entry is ordered to be mutated, but, it appears that the said order has not been given effect in the revenue record. It is the say of the plaintiff that he being the heir of Veljibhai Lakhamshibhai Joshi, the other defendants cannot deprive him of the property right. It appears that the private defendant 10 – appellant herein has purchased the suit property after public notice and after getting title clearance certificate. It also appears from the record that necessary permission for construction is already been granted by the authority and almost construction of 4th floor is completed.

21. It is pertinent to note that as per the version of the plaintiff, he has share in the property. It also reveals from the record that the deceased Veljibhai Lakhamshibhai Joshi had 10 heirs, and the plaintiff is one of them. It also reveals from the record that the Suit property was purchased in the name of Veljibhai Lakhamshibhai Joshi and Jitendrabhai and thereafter, there was nomination in the name of Hiteshbhai Veljibhai. On that basis, after the death of Veljibhai Lakhamshibhai Joshi, the property was mutated in the name of Hiteshbhai and Jitendrabhai. On that basis, other respondents have filed an affidavit and mutated in their names. However, the name of the plaintiff came to be excluded. It also reveals that earlier also there was a title certificate issued in the year 1988, wherein the name of the plaintiff has not been shown as owner thereof. Even if that certificate is not considered, it also reveals that prior to purchase of the present property, the defendant No.10-appellant has already got the title clearance certificate from the advocate, not only that, he has also registered the sale-deed in his favour and thereafter he has got appropriate permission for construction from the authority concerned. As stated hereinabove, there are already construction made on the property and at that stage, the plaintiff has filed the Suit for restraining the defendant No.10 from dealing with the property in any manner. Now, considering the material placed on record, it prima-facie appears that defendant No.10-appellant is a bonafide purchaser with value. It is not the case of the plaintiff that defendant No.10 has joined hands with other defendants in defeating his right by not making declaration before the revenue authority. Regarding his right on the basis of the heirship, whatever action has been taken regarding mutation of the entry is by other respondents, who are near relatives of the plaintiff. Since it is an admitted fact that deceased Veljibhai Lakhamshibhai Joshi had 10 heirs, one of who is the plaintiff and other brothers were also there, the share of the Plaintiff would be just 1/5th and not more than that. Now, when the defendant is a bonafide purchaser, his right to use the property cannot be made stand-still. The plaintiff could be compensated in terms of money by directing the other defendants to make payment of the shares of

plaintiff. Thus, the plaintiff could be compensated in terms of money and, therefore, when there is remedy available in terms of granting compensation to the plaintiff, there is no question for any prima-facie case, restraining the defendant No.10 – appellant from putting construction on the land. It is also pertinent to note that plaintiff has waited from the filing of the Suit till the defendant No.10 – appellant has constructed more than three floors on the land. This fact is also one of the factor which does not justify in granting interim injunction against the defendant No.10 -appellant.

22. Now, on perusal of the impugned order of the trial Court, it appears that the trial Court has misdirected itself and has mis-read the documents produced in the matter and has committed error of facts and law in granting interim injunction against defendant No.10- appellant herein. Therefore, it needs to be interfered with by this Court. However, at the same time, to safeguard the interest of the plaintiff, the defendant No.10 may be directed to see to it that whenever he executes any agreement or any document transferring or assigning or selling the same to the third party, then he may, recite, the fact of pendency of the Suit, in the document itself and all the transactions would be subject to the outcome of the suit pending between the parties.

23. So far as the Appeal from Order No. 140 of 2021 is concerned, the original plaintiff has only prayed that the automatic cancellation of the interim order by the trial Court is not proper one and, therefore, while maintaining the order of interim injunction, the injunction should be made permanent till the disposal of the Suit. So far as the legal point raised to the effect that trial Court cannot grant time bound injunction in an application under Order 39 Rule 1 & 2 is concerned, is devoid of merits of the provisions contained in Order 39 Rule 1 of CPC, wherein it is specifically provided that the Court may be order grant temporary injunction to restrain such act or make such order for the purpose of staying and preventing the vesting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the Suit or until further orders. Thus, provisions in a given case, the Court can grant temporary injunction up to specific days. Therefore, the grievance raised by the original plaintiff regarding ipso-facto coming to an end of the interim order, is not sustainable in the eyes of law. Of course, as observed hereinabove, the interim relief granted by the trial Court itself is not sustainable in the eyes of law and on that count also, the Appeal from Order No. 40 of 2021 is liable to be dismissed.

24. In view of the aforesaid discussion, the Appeal from Order No. 138 of 2021 deserves to be allowed whereas Appeal from Order No. 140 of 2021 needs to be dismissed.

25. Accordingly, the Appeal from Order No. 138 of 2021 is hereby allowed and the impugned order dated 20.10.2021 passed below Exh-5 in Special Civil Suit No. 155 of 2021 by the Civil Judge (S.D) at Vadodara is hereby quashed and the application of the plaintiff at Exh-5 in Special Civil Suit No. 155 of 2021 stands dismissed. The Appeal from Order No. 140 of 2021 also stands dismissed.

However, the defendant No.10 is hereby directed that ,as and when he executes any document, in any manner, in respect of third party, in that case, he shall mention in such document, regarding the pendency of the present Suit and all the transactions will be subject to the result of the Special Civil Suit No. 155 of 2021.

The trial Court is hereby directed to expedite the hearing of the Civil Suit No. 155 of 2021 and to decide the same as early as possible, preferably within a period of 4 months, from the date of receipt of order of this Court.

The parties are directed to cooperate with the trial Court for earlier disposal of the same.

No order as to costs.

In view of the above, the Civil Applications stand disposed of accordingly.

(DR. A. P. THAKER, J)

FURTHER ORDER

Learned advocate Mr. S.P. Majmudar for the appellant in Appeal from Order No. 140 of 2021 i.e. the original plaintiff seeks stay of operation of this order for two weeks.

In view of the facts and circumstances of the case, the same is declined.