



AIR 2015 GUJARAT 74
GUJARAT HIGH COURT
S. G. SHAH, J.

D. K. Trivedi, for Appellants; S. N. Thakkar,
Mrs. Kalpanak Raval, Ms. Sonal, D. Vyas,
Nanavati Associates, for Respondent.

Appeal From Order No. 429 of 2013 with Civil
Application Nos. 11639 and 13713 of 2013, D/-
31 - 1 - 2014

Laxmiben d/o Nathabhai Mafatbhai Patel v.
Dhawal Amrutbhai Patel and Ors.

**Specific Relief Act (47 of 1963), S.37 -
Temporary injunction - Restraining bona**

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**fide purchaser from further alienation of
properties - Cannot be passed at instance
of co-parcener who has already relinquished
her/his share of property in favour of other co-
parcener long back - And agreement to sale
of property (including his/her share) in favour
of bona fide purchaser by other co-parcener
is signed and confirmed by him/her. AIR 1997
SC 127, AIR 1984 SC 1234, Disting.**

(Para10)

Cases Referred

Chronological Paras

(2013) 9 SCC 181	9
AIR 2013 SC 1226 : AIR	9
2013 SC (Civ) 869 : 2013	
AIR SCW 1174	
AIR 2012 SC 2448 : AIR	9
2012 SC (Civ) 1912 : 2012	
AIR SCW 3200	
(2009) 6 SCC 194	9
AIR 2008 SC 2291 : 2008	9
AIR SCW 3817	
2006 (1) Guj LH 171	9
AIR 1997 SC 127 : 1996 AIR	9
SCW 4287 (Disting.)	
AIR 1984 SC 1234 (Disting.)	9
AIR 1965 SC 295	9

Judgement

1. JUDGMENT :-Heard learned senior advocate Mr. Deven Parikh with learned advocate Mr. D. K. Trivedi for the appellants and learned senior advocate Mr. Persy Kavina with learned advocate Mr. S. N. Thakkar for the respondent No.6. Learned advocate Mr. Nikunj K. Raval for learned advocate Mrs. Kalpana K. Raval for the respondent No.9 learned advocate Ms. Sonal D. Vyas for the respondent No.8, learned senior advocate Mr. K. S. Nanavati with learned advocate Ms. Kunjal J. Vyas for Nanavati Associates for the respondent Nos. 2 to 5.

2. All the parties have agreed to dispose of this appeal at an admission stage and hence they are heard at length. Appellants are original plaintiffs whereas respondents are original defendants and therefore they are referred in the same capacity in this order also.

3. The appellants have filed this suit for restraining the defendants from further alienating the suit properties on the ground that they are also co-parceners of the suit properties being legal heirs of original land owner Nathabhai Mafatbhai Patel. Pedigree of the deceased Nathabhai Mafatbhai Patel is disclosed at para 2 on page 3 of the plaint which confirms that Nathabhai Mafatbhai Patel had expired on 07-10-1997. His wife Menaben has expired on 30-10-1997. They have two children namely, (1) Amrutbhai Nathabhai Patel, who expired on 26-05-1998 leaving behind widow and two sons and (2) Laxmiben, who is plaintiff No.1. Plaintiff Nos. 2 and 3 are sons of plaintiff No.1. Defendant No.1 is son of Amrutbhai Nathabhai Patel. Wife of Amrutbhai Nathabhai Patel, namely Pushpaben has expired on 28-09-2008

whereas their son Bhupendrabhai has expired on 16-07-2009.

3.1. Therefore, plaintiffs are daughter and grand son of deceased Nathabhai Mafatbhai Patel. Therefore, plaintiff's case is to the effect that since Nathabhai Mafatbhai Patel had only two children i.e. one Amrutbhai Nathabhai Patel and Laxmiben, heirs of Amrutbhai Nathabhai Patel and Laxmiben are entitled to $\frac{1}{2}$ share of ancestral properties of deceased Nathabhai Mafatbhai Patel.

4. Since description and details of properties is not disputed between the parties, the same are not described herein. However it is well described in the pleadings before the trial Court as well as in the impugned order.

5. It seems that defendant No.1 has alienated some of the suit properties in favour of some defendants and in turn they have further alienated such suit properties to some other defendants, plaintiff has no option but join all such subsequent purchaser and owners as defendants. Plaintiff has also joined revenue authority and local authority as defendant since he is claiming an injunction for further alienation and transfer of the suit properties in the name of 3rd person. However, at present main dispute is between legal heirs of deceased Nathabhai Mafatbhai Patel and subsequent purchasers of the suit properties from its original owner including defendant No.6 is last purchaser and occupier of the suit property, all the defendants are defending the suit preferred against them.

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6. The sum and substance of the suit and interim application for stay is to the effect that considering the ancestral properties and right of the plaintiffs as co-parceners, defendant does not have absolute right to sale out the properties and part with the possession without

their consent and therefore when ownership of suit properties has been changed by defendant No.1 in name of some other defendants, now till their right is being decided, defendants shall be restrained from further alienating and transferring the suit properties in any manner. To prove such contention and voluminous documentary evidence is produced on record. However, more or less it is only in the form of confirmation of sale transactions and thereby alienation of the suit properties by defendant No.1 in favour of other private defendants.

6.1. As against that defendant No.1 has resisted the suit and injunction application contending that in fact plaintiff No.1 Laxmiben being daughter of Nathabhai Mafatbhai Patel had relinquished her share from suit properties long back and in fact she has also confirmed the sale transactions by the defendants by signing such sale deed as a confirming party disclosing that she has no right in suit properties whatsoever.

6.2. As against that other defendants have contended that they are bona fide purchaser for the value and that they have not only invested for price of the properties in question but also for development of such properties and therefore if they are not allowed to deal with their properties then there would be irreparable loss to them which cannot be compassionate in terms of money. It is further contended that since the sale transactions is now over and since they have paid the sale price to defendant No.1 if at all plaintiffs have any right in the suit properties they are entitled for the share from the sale consideration which can be requested from the defendant No.1 alone since entire sale consideration has accepted by defendant No.1. Therefore, they are also requested to dismiss the appeal.

7. During the arguments several factual details were recollected and several dates were referred. However, at such stage of deciding interim application for injunction, Court does not have to

decide the suit finally and therefore only material facts and circumstances which are necessary for determining the issue on hand only which discussed and deal with. However, sum and substance of arguments by all the parties are recorded.

7.1. In back ground of above discussion if we perused the record and arguments of both the sides, it transpires that properties in question was purchased by one Mafatlal in the year 1943 since he died in the year 1955, the suit properties came in the hands of his son deceased Nathabhai Mafatbhai Patel who is father of plaintiff and grand father of defendant No.1. Though it is contended in the plaint that after the death of Nathabhai Mafatbhai Patel, brother of plaintiff No.1 and father of defendant No.1 Amrutbhai Nathabhai Patel has managed to get the revenue entry No. 4145 dated 06.07.1955, which was approved on 23.09.1955, whereby suit property was mutated from the name of Mafatbhai to Nathabhai Mafatbhai Patel and therefore for plaintiffs and defendant No.1, this is an ancestral properties. Thereafter by entry No. 10408 dated 21.11.1974, which was approved on 16.04.1976, wherein though plaintiff No.1 was alive instead of mutating the entry in joint name of plaintiff No.1 and deceased Amrutbhai Nathabhai Patel, it was mutated only in the name of Amrutbhai Nathabhai Patel who also in turn expired in the year 1998. However, considering the fact that plaintiff No.1 is alive and she is having equal right in suit property another entry No. 12448 was endorsed and approved on 27.02.1978 and thereby name of Amrutbhai Nathabhai Patel and Laxmiben were mutated as a successor of Menaben Nathabhai Mafatbhai Patel, who expired in the year 1977. Thereby, it is clear that entry No. 10408 was not proper and ultimately name of plaintiff No.1 was entered in the revenue records as co-owner and co-parceners of the suit properties. However, by another entry No. 12449 dated 25.01.1978 which also approved on 27.02.1978 i.e. very next entry to the previous

entry wherein name of Amrutbhai Nathabhai Patel and Laxmiben were mutated. In this second entry name of Laxmiben was

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deleted making a statement that she has relinquished her right and therefore plaintiff is legal heir of Nathabhai Mafatbhai Patel, her name has been deleted from the revenue record by such entry No. 12449 dated 25.01.1978. In support of such entry a statement of plaintiff No.1 was brought on record wherein she has given a statement before the Circle Officer of Vadaj and endorsed her signature on such statement disclosing that she let go her right over the suit properties in favour of her brother Amrutbhai Nathabhai Patel. However, now she has come forward with a case that she has never relinquished her right by such statement and that the same was obtained by fraud. However, the fact remains that pursuant to such statement in the year 1978 revenue entry No. 12449 was enforced in the revenue record in the year 1978 and till then properties were remain in the name of Amrutbhai Nathabhai Patel. When Amrutbhai Nathabhai Patel was also died on 26.05.1998 another entry No. 13839 dated 08.06.1998 which was also confirmed on 11.08.1998 was endorsed in the revenue record whereby name of wife and children of Amrutbhai Nathabhai Patel were mutated. Thereafter, said legal heirs of Amrutbhai Nathabhai Patel being defendant No.1 and his deceased mother and brother had jointly executed the sale - deed in favour of defendant Nos. 2, 3, 4 and 5 on 02.12.2005 but the same was registered only on 30.06.2008 i.e. after the death of Pushpaben on 12.03.2008. On perusal of such sale-deed executed by legal heirs of Amrutbhai Nathabhai Patel namely his sons Dhaval and Bhupendra as well as widow Pushpaben in favour of defendant Nos. 2 to 5, wherein plaintiff No.1 as well as wife of Bhupendra, Purviben and M/s. Bennett Coleman and Co. Ltd. had also

signed the sale-deed as confirming parties. To that extent if agreement to sale is perused, there is clear reference in para 3 of such sale-deed that since Purviben is wife of Bhupendra, she is signing such documents as confirming party No.1 whereas Laxmiben i.e. plaintiff No.1 being daughter of deceased Nathabhai Mafatbhai Patel also signed such documents as confirming party, though she does not have right or title whatsoever in the property which is being sold as aforesaid. In para 7 of such sale-deed it is again reconfirmed that while entering into such sale transactions seller has convinced the plaintiff No.1 to become a confirming party and plaintiff No.1 has agreed to do so and hence she has also signed such sale-deed as confirming party. They have again while describing sale transactions in para 5 it is categorically stated that though name of plaintiff No.1 was mutated at some point of time in the revenue record the same was removed since she has relinquished her right in favour of her brother and even thereafter she was signing such sale-deed as a confirming party with specific further disclosure that though she has no right in property in question, she let go of such right if at all in favour of the purchaser without any consideration whatsoever.

7.2. Therefore, it is crystal clear that plaintiff No.1 has not only given statement before the revenue authority about relinquishing her right in favour of her brother Amrutbhai Nathabhai Patel i.e. father of the defendant No. 1, but also signed the sale-deed to confirm such relinquishment and such sale-deed has been registered almost after 3 years before the competent authority where plaintiff No.1 has remained present and endorsed the sale-deed by her signature and thumb impression before the competent authority where her photograph was also taken and affixed with her name and signature. In view of such specific endorsement in the year 2005 and 2008 now plaintiff has no right either to claim ½ share in the property or file such suit which is clearly time barred.

7.3. So far as second confirming party M/s. Bennett Coleman and Co. Ltd. though we are not concerned about its factual details at present it would be proper to recollect that in the same sale-deed there is specific reference that there was some agreement to sale in favour of such company on 30.01.1981 and such company has also filed a suit No. 2985 of 1991 for injunction and suit No. 317 of 1994 for specific performance to agreement to sale in their favour. However such suits were withdrawn and ultimately company has also endorsed the sale-deed in favour of defendant Nos. 2 to 5 confirming

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the sale transaction in their favour. The revenue record shows that in turn land in question is mutated in the name of defendant Nos. 2 to 5 by entry No. 20732 and at present 7/12 extracts are showing their names as absolute owners.

7.4. It seems that in turn such defendants have entered into such agreement of development with defendant No.6 and in turn defendants have obtained permission to develop such land from local authorities and started its development.

7.5. Therefore, at present it is conveyed by the defendants that since plaintiff No.1 has already relinquished her right over the properties in favour of her brother and since she has already endorsed the sale-deed as a confirming party, now she has no right whatsoever from developing the suit properties. It is also contended that plaintiff has tried her level best to object the mutation in name of defendants. However, could not succeed in revenue proceedings as her RTS Appeal No. 666 of 2011 was dismissed on 14.09.2012. It is also contended that commencement letter (Raja Chithi) for the construction in favour of defendant Nos. 2 to 5 was already issued by defendant No. 8 i.e. Ahmedabad Municipal

Corporation and hence defendant No.6 has started to carry out construction and therefore at such stage of order of status quo is passed then they will suffer great inconvenience and irreparable loss.

7.6. It seems that considering the above facts and circumstances the trial Court has rejected the application at Exhibits 6 and 7 for interim relief by the plaintiffs and appellant herein by impugned judgment and order dated 30.09.2013 in Civil Suit No. 2028 of 2011.

7.7. On perusal of such impugned judgment and order it becomes clear that the trial Court has considered the rival submissions in nutshell after referring relevant case laws relied upon by both the sides relying upon the relinquishment by plaintiff No.1 in favour of her brother in the year 1978 itself, the trial Court has refused to grant interim relief as prayed for by the plaintiff - appellant.

8. Considering the rival submissions and available record I do not find any irregularity or illegality in the impugned order and therefore there is no substance in the appeal which deserves to be dismissed on the ground stated by the trial Court in the impugned order as well as for some other grounds also viz. there is basic issue regarding mutation since the relinquishment statement and revenue entries are of the year 1978, the signature of plaintiff No.1 in sale-deed is in the month of November, 2005 whereas suit is filed only on 05.09.2011.

8.1. Moreover, now the fact remains that property has been transferred and mutated in the name of bona fide purchaser of the property and she is entitled and she would certainly get ½ share of sale proceed from defendant No.1. There is no dispute that plaintiff No.1 has never challenged her statement and mutation entry in favour of her deceased brother which was of the year 1978. It is also not disputed that at present

competent authority has, relied upon registered sale-deed for mutating the properties and local authorities have approved the development and construction on suit properties.

9. However, before parting with the matter let us consider the citations referred by both the sides.

(1) Appellant has relied upon a decision by the Hon'ble Apex Court reported in (2013) 9 SCC 181 between Sudish Prasad and Ors. v. Babuijonhia alias Manorma Devi and Anr. submitting that in case of minor successor, his or her guardian stands in fiduciary relationship to his ward and acts as a trustee and therefore relinquishment by plaintiff No.1 is not material when suit property is ancestral properties wherein plaintiff Nos. 2 and 3 have their share in the suit properties right from their birth. For the purpose the date of birth is disclosed in the plaint itself of the year 1972 and 1975 even in that case they become major before the year 1993 and therefore if at all they have to challenge the relinquishment of their mother they should have challenged it before 1996. Therefore only because of such judgment, appeal cannot be allowed when there are other defection in the plaintiff's case. It is also contended with

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reference to such citations that oral gift of immovable property by plaintiff No.1 is not contemplated. However, there is no question of oral gift when plaintiff No.1 has given a statement in writing in her own name before the revenue authority relinquishing her right.

(2) Appellant has also relied upon para 32 of judgment reported in (2009) 6 SCC 194 between Sneha Gupta v. Devi Sarup and Ors. pressing that title to a property must be determined in terms of the statutory provision. Sister cannot be deprived title to the property along with her brothers and sisters, only by reason of an agreement and that

if a party relinquished their right in the property, the same must be done by registered documents in terms of the provisions of the Registration Act. However, at present we are not deciding the suit finally and therefore though this principle is applied it would only prove the right of the plaintiff to get ½ share in the suit property and thereby in turn sale proceed of the suit property when property has already been pass on long back before filing the suit. Therefore this case will not help the plaintiff.

(3) Appellant has also relied upon AIR 1997 SC 127 between Smt. Gomtiben through legal heirs and others v. Mattulal through legal heirs. However, in this case, the issue before the Hon'ble Apex Court was regarding gift - deed where it is held that in absence of registered instrument of gift, property could not have been transferred to proposed donee. The defence between the gift in the present citations and provisions citations would certainly a gift to outsider even if gift is to the family members and even if such principle is to be accepted such citations would not help the appellant at such interim stage, since in this case a dispute is with cousin who was claiming right through gift - deed whereas in the present case plaintiff No.1 is not only relinquished her right but also signed sale - deed as confirming party.

(4) AIR 1984 SC 1234 between Smt. Raj Rani v. The Chief Settlement Commissioner, Delhi and Ors., wherein the Hon'ble Apex Court has dealt with the provisions of the Hindu Succession Act regarding devolution of co-parceners of the property. There is no dispute about the succession amongst the deceased person. However, the issue herein is relinquishing right. Therefore, this judgment will not help the plaintiff to succeed in the appeal.

(5) 2006 (1) GLH 171 between Kantibhai Ishwarbhai Patel through his heirs and legal representatives v. Chandrakant Ishwar-bhai

Patel, wherein Hon'ble Judge of this High Court has observed that mutating entry alone does not confirm the right of ownership there is no dispute to such legal position. However so far as interim relief is concerned when there is a bona fide purchaser of value and when possession is already pass on and when loss or damage, plaintiff can be ascertained in terms of money since sale price of the property is confirmed, such judgment will not give any benefit of the appellant so as to allow the appeal.

(6) AIR 1965 SC 295 between Suraj Rattan Thirani and Ors. v. Azamabad Tea Co. Ltd. and Ors., wherein Hon'ble the Apex Court has confirmed that possession and management by one co - sharer would not preclude and estopped the other co - sharer from claiming his/her right. In the present case when plaintiff No. 1 herself not only relinquished but endorsed the sale - deed in favour of defendant Nos. 2 to 5, this judgment would not change the situation at such interim stage.

(7) Whereas, with reference to decision between Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Co-Operative Housing Society, Jaipur and Ors., reported in (2013) 5 SCC 427 : (AIR 2013 SC 1226) it is contended that if any transaction is prohibited by law then beneficiary of such transaction cannot claim such quality or right over the suit property. In the present case there is no quality or right over the suit property. In the present case, there is no illegality in mutation entry in favour of defendant Nos. 2 to 5 and therefore so far as interim relief against defendant Nos. 2 to 6 are concerned such citations would not change the possession.

9.1. As against that defendants have relied upon;

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(1) 2012 AIAR (Civil) 500 : (AIR 2012 SC 2448) between M/s. Best Sellers Retail (India) Ltd. v. M/s. Aditya Birla Nuvo Ltd. and Ors. wherein by dealing with Order 39 of Rules 1 and 2 of Code of Civil Procedure the Hon'ble the Apex Court has held that even where prima - facie case is in favour of the plaintiff, Court will refuse temporary injunction if the injury to be suffered by the plaintiffs. Refusal of , on account of refusal of temporary injunction was not irreparable.

(2) In case between Mandali Ramganna and Ors. etc. v. T. Ramachandra and Ors., reported in AIR 2008 SC 2291 equal to 2008 (11) SCC 1 wherein while considering order 39, Rule 1 of Code of Civil Procedure held that ground of injunction is an equitable relief and therefore at present who had kept quiet for a long time and allow to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequence depending upon the nature thereof. The Courts dealing with such matters must make all endeavours to protect the interest of the parties. The cited case was also regarding ancestral properties and dispute between co - parceners wherein while summing up the case the Apex Court has held for construction has come up and therefore there cannot be directed to be demolished and therefore the interest of the justice would be served if while allowed the defendants to allow the construction is thereby trial Court was requested to dispose of the suit at an early date.

10. At present the fact remains that after filing of the suit in the year 2011 for one or another reason there is no stay in the favour of the plaintiff till date and even before filing of the suit, the suit property was already sold and transferred in the name of defendant Nos. 2 to 5. In view of such fact, whatever right of the plaintiff, over

the suit property is concerned, now it is in the form of their share from the sale proceeds of the suit property. They may also claim further damages and interest on such amount till it is recovered but restraining the bona fide purchaser from utility of fruits of its investment after couple of years could not be justified on such interim stage when rights of the parties are yet not determined. There is difference between settled legal position confirmed in above referred cases cited and factual details of the present case. Therefore, such judgment cannot be considered as binding effect so as to allow this appeal.

10.1. In view of above, appeal is dismissed. There shall be no order as to costs.

10.2. In view of order passed in main appeal, Civil Application does not survive and the same is disposed of accordingly.

ORDER IN CIVIL APPLICATION NO. 13713 OF 2013

During the process of transcribing such judgment and order, the appellant has preferred one another Civil Application (For Direction) No. 13713 of 2013 to place several documents on record. It is not disputed that such documents were not placed before the trial Court before passing impugned order by the trial Court. It is contended by the appellant that such documents are crucial but could not be available with the appellant at that time and therefore could not be placed on record. However, when appeal is heard and decided on merits, there is no reason to entertain such application at such stage. It is to be recollected here that for all such purposes appellant may applied before the trial Court under Order 39, Rule 4 of the Code of Civil Procedure and trial Court is empowered to discharge, verify or setting aside such order. Therefore, at this stage such additional documents cannot be taken on record and hence such Civil Application is dismissed.



However, appellant is free to file such documents and to apply for proper orders before the trial Court pursuant to such documents.

In that case, trial Court shall decide the matter in accordance with law without being influenced by any previous order.

Appeal Dismissed .