NEUTRAL CITATION
2025:GUJHC:36015

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/APPEAL FROM ORDER NO. 143 of 2024
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/APPEAL FROM ORDER NO. 143 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

==========

Approved for Reporting	Yes	No

==========

BHAVINI D/O JITENDRABHAI TRIBHOVANDASSURATI (PARMAR) & ANR.
Versus
JAYVEER ENTERPRISES PVT. LTD. & ORS.

==========

Appearance:
AMRITA A PATEL(7534) for the Appellant(s) No. 1,2
MR.D K.PUJ(3836) for the Respondent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

Date : 03/07/2025

ORAL JUDGMENT

1. The present Appeal from Order is filed under Order 43 rule 1(r) of CPC. challenging the judgment and order dated 19.01.2024 passed by the Additional Senior Civil Judge, Surat below Exh. 5 in Special Civil Suit No. 252 of 2018.

2.0 Learned advocate Ms. Amrita A. Patel for the appellants would submit that the appellants herein are original defendants, who filed suit against the respondents herein

NEUTRAL CITATION
2025:GUJHC:36015

seeking declaration, injunction and partition of the suit property, wherein an injunction application came to be filed, which was erroneously rejected by the trial Court. She would further submit that the appellants are daughter and wife of respondent No.15 respectively, whereas respondent No.11, happens to be grand-mother and mother-in-law respectively. Respondent No.10 happens to be mother of Respondent No.11. It is submitted that the suit property are ancestral property wherein right title, interest of appellants/ plaintiffs would survive by way of succession, they are entitled for their 1/45 shares, thereby injunction sought for, which ought to have been granted.

2.1 Learned advocate Ms. Patel would further submit that sale- deed executed in favour of respondents No. 1 to 3 in the year 2016 by defendant No.11 along with other legal heirs, who are also joined as defendants, is as such null and void, which was challenged in the suit. She would further submit that the trial Court has erroneously observed that whether the plaintiffs have a right title interest in the suit property is a subject matter of evidence and no injunction as prayed for can be granted.

2.2 Learned advocate Ms. Patel would further submit that the trial Court has not properly considered the various

NEUTRAL CITATION
2025:GUJHC:36015

provisions of Hindu Succession Act, which resulted into miscarriage of justice. So, marking the above submission, learned advocate Ms. Patel would request to this Court to allow the present Appeal from Order.

3. Per contra, learned advocate Mr. D.K. Puj for respondent No.1 would submit that there is no error much less any gross error of law committed by the trial Court while rejecting the injunction application filed by the plaintiffs. He would further submit that this Court having limited jurisdiction to interfere with the order impugned in the present appeal while exercising its power under Order 43 rule 1(r) of CPC.

3.1 Learned advocate Mr. Puj would further submit that the sale deed in question executed in the year 2016, whereas the suit in question came to be filed in the year 2018, thereby, no error can be found in the order passed by the trial Court and as such no injunction as prayed for can be granted. He would further submit that after execution of sale-deed, during the pendency of the suit, there are subsequent development taken place, inasmuch as the suit land is already developed by the defendant No.1 and there is already existing structure on the suit land and due to such reason also no injunction can be granted as prayed for.

NEUTRAL CITATION
2025:GUJHC:36015

3.2 Learned advocate Mr. Puj would further submit that as such the plaintiffs have no right to file suit as father and husband of plaintiffs is alive and joined as defendant No.15 and when grand-mother and mother-in-law of plaintiffs respectively is also alive, plaintiffs have no right title interest in the suit property.

3.3 Learned advocate Mr. Puj would further submit that as plaintiffs have not any right to suit and as such no cause of action arose to file such suit, defendants have preferred an application under Order 7 rule 11 of CPC, which is now pending for its adjudication before this Court in Civil Revision Application under Section 115 of CPC.

3.4 So, making the above submission, learned advocate Mr. Puj would request this Court to dismiss the present Appeal from Order.

Point for determination

Whether the order impugned in the present appeal is erroneous, perverse and contrary to the provisions of law or not?

NEUTRAL CITATION
2025:GUJHC:36015

ANALYSIS

4. At the outset, it is required to be observed that the present Appeal from Order having filed under Order 43 rule 1(r) of CPC on principle and not on fact, it is well settled legal position of law that this Court cannot lightly interfered with the discretionary order passed by the trial Court while exercising its power under Order 39 of CPC, unless it has been shown by the appellants that the order impugned in the present appeal is erroneous, perverse, arbitrary and or contrary to the settled principle of law, otherwise no interference can be made by this Court in the present appeal. ***[See : (i) Wander Ltd. and another Vs. Antox India P. Ltd. reported in 1990 (supp) SCC 727, (ii) Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and others recorded in Civil Appeal No. 13001 of 2024 dated 22nd November, 2024*** **reported in 2024 SCC Online SC 3438]**.

5. Now adverting back to the facts of the case, it is remain undisputed that plaintiffs during life time of their predecessor i.e. defendant No.15 & 11 who happens to be father and husband of plaintiffs and grand-mother and mother-in-law of plaintiffs respectively have chosen to file suit for partition and also sought declaration.

NEUTRAL CITATION

2025:GUJHC:36015

6. It appears that due to disturb relationship between the plaintiffs with defendant no.15 might be residing separately and due to such reason, the suit in question was filed. Nonetheless, fact remains that predecessor of plaintiffs i.e. defendant No. 15, defendant no. 11 and her predecessor defendant No.10 who happens to be grand-mother of defendant No.15 are all alive at the time of filing of suit. Further, defendant No.11 happens to be daughter of late Chhaganbhai, who died on 18.03.1984 being one of co-sharer of suit property along with her mother defendant No.10 and other branch of legal heirs of her father, entitled to sell suit property in question as properties received by them on demise of late Chhaganbhai would become their own property.

7. Prima-facie, plain reading of Section 8 read with Section 4 of the Hindu Succession Act, 1956, would indicate that on demise of Hindu dying intestate then his class-I legal heirs would inherit such property by way of inheritance. As per settled legal position of law in such a situation, class-I legal heirs of Hindu dying intestate become absolute owner of property left by him after his/her predecessor.

8. As such, this issue is no longer remain *res-integra* having already answered by this Hon'ble Apex Court in the

case of ***Commissioner Of Wealth-Tax, Kanpur versus Chander Sen reported in AIR 1987 SC 1752 : 1986 (3) SCC 567***, wherein in it has been held as under:-

> *"[10] The question here, is, whether the income or asset which a son inherits from his father when separated by partition the same should be assessed as income of the Hindu undivided family of son or his individual income. There is no dispute among the commentators on Hindu Law nor in the decisions of the Court that under the Hindu Law as it is, the son would inherit the same as karta of his own family. But the question, is, what is the effect of S. 8 of the Hindu Succession Act, 1956? The Hindu Succession Act, 1956 lays down the general rules of succession in the case of males. The first rule is that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II and Class I of the Schedule provides that if there is a male heir of Class I then upon the heirs mentioned in Class I of the Schedule. Class I of the Schedule reads as follows :*
>
> > *"Son; daughter; widow; mother; son of a predeceased son; daughter of, a predeceased son; son of a predeceased daughter, daughter of a predeceased daughter; widow of a pre-deceased son; son of a predeceased son of a pre-deceased son; daughter of a predeceased son of a pre-deceased son; widow of a pre-deceased son of a predeceased son."*
>
> *[11] The heirs-mentioned in Class I of the Schedule are son, daughter etc. including the son of a predeceased son but does not include specifically the grandson, being a son of a son living. Therefore, the short question, is, when the son as heir of Class I of the Schedule inherits the property, does he do so in his individual capacity or does he do so as karta of his own undivided family?*
>
> *[14] It is clear that under the Hindu law, the moment a son is born, he gets a share in the father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source from the grandfather or from any other source, be it separated property*

*or not, his sonshould have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. **But the question is; is the position affected by S. 8 of the Succession Act, 1956 and if so, how?** The basic argument is that S. 8 indicates the heirs in respect of certain property and Class I of the heirs includes the son but not the grandson. It includes, however, the son of the predeceased son. It is this position which has mainly induced the Allahabad High Court in the two judgments, we have noticed, to take the view that the income from the assets inherited by son from his father from whom he has separated by partition can be assessed as income of the son individually. **Under S. 8 of the Hindu Succession Act, 1956 the property of the father who dies intestate devolves on his son in his individual capacity and not as karta. of his own family. On the other hand, the Gujarat High Courthas taken the contrary view.***

[21] It is necessary to bear in mind the preamble to the Hindu Succession Act, 1956. The preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

*[22] **In view of the preamble to the Act i.e. that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family**. The Gujarat High Court's view noted above, ifaccepted, would mean that though the son of a predeceased son and not the son of a son who is intended to he excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. **It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession Act would be HUF in his hand vis-à-vis his own son; that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property and vis-à-vis son and female heirs with respect to whom no such concept could be***

applied or contemplated. It may be mentioned that heirs in Class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son etc.

[23] Before we conclude we may state that we have noted the observations of Mulla's Commentary on Hindu Law, 15th Edn. dealing with Section 6 of the Hindu Succession Act at pp. 924- 26 as well as Mayne's on Hindu Law, 12th Edn., pp. 918-19.

[24] The express words of Section 8 of the Hindu Succession Act, 1956 cannot be ignored and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to "amend" the law, with that background the express language which excludes son's son but includes son of a predeceased son cannot be ignored.

[25] In the aforesaid light the views expressed by the Allahabad High Court, the Madras High Court, Madhya Pradesh High Court and the Andhra Pradesh High Court, appear to us to be correct. With respect we are unable to agree with the views of the Gujarat High Court noted hereinbefore."

(emphasis supplied)

9. Furthermore, the suit is filed for seeking partition of Hindu undivided family property at the instance of daughter of defendant no. 15 and grand-daughter of defendant No.11 respectively. It appears from the pleading of the parties that defendant no.15 happens to be father of plaintiff no.1, has not sought for any partition and also having any objection as regards the execution of sale-deed by his mother i.e. defendant no.11. When predecessor of plaintiff no.1 i.e. her father and grandmother and so also mother of her

NEUTRAL CITATION
2025:GUJHC:36015

grandmother are alive, no right accrued in favour of plaintiff no.1 to claim such partition. The plaintiff no.2 happens to be wife of defendant no.15 and daughter-in-law of defendant no.11 would not have such right in property. The issue is no longer remain res-integra as its covered by the decision of the Division Bench of this Court in the case of ***AHER HAMIR DUDA Vs. AHER DUDA ARJAN reported in 1977 GLR 1032,*** wherein held thus:-

> "*[9] The right of the appellant, a coparcener, by birth to a share in the ancestral property is not in dispute. Every coparcener is entitled to a share on partition. His right to seek partition or to enforce partition is also not denied. What is put against him is only this. That right which he has, so far as the erstwhile Presidency of Bombay is concerned, cannot be exercised or enforced without the consent of the father, where the coparcenary consists of collaterals like uncles and others. He cannot ask for severance of status without the father giving assent thereto. Admittedly in this case the father of the appellant had not given his assent and in fact he has been throughout contesting the right of his son, the appellant, to enforce his right for partition. Mr. Vyas invited our attention to the written statements to contend that both the father and uncle of the appellant had pleaded that the father of the appellant had separated from the rest of the family. That case was not accepted by the first appellate or the second appellate Court. The specific case of the plaintiff throughout has been that he is a member of the undivided family and that he is entitled to ask for partition and separate possession of his share. Findings of fact have been recorded by the District Court and by the learned Single Judge that there was no severance of status and that the coparcenary remained intact In other words, the learned Single Judge and the first appellate Court rejected the defence of the respondents that the father of the appellant had separated himself from his father about forty years ago. That finding of fact recorded by the first appellate Court and by the learned Single Judge of this Court cannot be disturbed by us."*
> *(emphasis supplied)*

NEUTRAL CITATION
2025:GUJHC:36015

10. Thus, the conjoint reading of the ratio laid down by the Hon'ble Apex Court and this Court in above referred cases, it would be clear that defendant No.11 who happens to be grand-mother and mother-in-law of plaintiffs would entitle to execute sale-deed in relation to suit property inherited by her father dying intestate. Further, when defendant No.15, who happens to be father and husband of plaintiffs respectively is still alive, then plaintiffs cannot sought any injunction against defendant No.11 and other defendant who are legal heirs of other branch of father of defendant No.11.

11. In the light of the aforesaid, I do not find any error committed by the trial Court while rejecting the impugned application. I do not find any perversity in the order impugned in the present appeal. So, this Court would not like to interfere with the discretionary order passed by the trial Court while exercising its power under Order 43 rule 1(r) of CPC.

12. Before parting, it is made clear that any observation either made by the trial Court in the impugned order or made by this Court in the present order herein would not come in the way of any of the parties to the suit proceedings in future and in any pending litigation. The suit is required to

NEUTRAL CITATION
2025:GUJHC:36015

be decided on its own merit as per the evidence coming on record of the suit, the same shall be decided without being influenced by such observations made by either trial court or this Court in the present order.

13. In view of the above, the present Appeal from Order lacks merit, requires to be dismissed which is hereby dismissed. No order as to costs. Rule is discharged.

14. Civil Application would not survive and disposed of accordingly.

(MAULIK J.SHELAT,J)

SALIM/