

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
APPEAL FROM ORDER NO.181 OF 2022  
WITH  
INTERIM APPLICATION NO. 1199 OF 2022**

Ramanbhai Manilal Patel @ .. Appellant  
Ramanmanio  
Versus  
Kanaiyalal Manilal Patel & Ors. .. Respondents

**WITH  
APPEAL FROM ORDER NO.265 OF 2022  
WITH  
INTERIM APPLICATION NO. 1821 OF 2022**

Ramanbhai Manilal Patel @ .. Appellant  
Ramanmanio  
Versus  
Kanaiyalal Manilal Patel & Ors. .. Respondents

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Mr. R. S. Desai i/b. Ms. Prabha U. Badadare for the Appellant.

Mr. Sagar P. Batavia for Respondent no. 1.

Mr. S. R. Page for Respondent no. 3

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**CORAM: BHARATI DANGRE, J.  
DATED : 31<sup>st</sup> MARCH, 2022**

**P.C:-**

1. The two appeals, which assail two distinct orders passed by the Civil Judge Senior Division, Daman, in two distinct Suits, being declaration and injunction in respect of properties mentioned in the plaint.

Since the parties to the two Suits are the two brothers, raising a dispute about the property, I deem it expedient to club the Appeals and hear the respective counsel for the Appellant and the contesting party, the original plaintiff.

**AO 181/2022**

1. Heard the learned counsel Shri Desai for the Appellant and the learned counsel for the respondent i.e. the plaintiff in SCS/13/2018.

The appellant is aggrieved by an order dated 11<sup>th</sup> February, 2022 passed by the Ld. Civil Judge Senior Division Daman, on an application filed by the plaintiff Below Ex. 5 in Special Civil Suit.

What hurts the Appellant is that part of the order, which restraint him from entering into the suit properties or carrying on any business therein and from further creating third party interest in the sale.

2. Pertinent to note that then plaintiff and defendant nos. 1 and 2 are brothers and some portion of the property belonging to defendant no. 1 was sold out to the plaintiff for a consideration.

My attention is invited to the order dated 11<sup>th</sup> February, 2013 passed by the Deputy Collector, Daman in an application seeking partition of land bearing Survey No. 493/8 admeasuring 1200.00 sq. mts and Survey No. 493/9 admeasuring 1200.00 sq. mts situated at village Dabhel, Nani Daman which was jointly standing in the name of the plaintiff and defendant. Pursuant to the consensus arrived at, between the parties they approached the Collector and sought partition. The area was sought to be demarcated, between themselves by specifying the area to be retained by each of them.

The Collector heard the two parties before him in person on 5<sup>th</sup> February, 2013, on the application of the partition and statements were also recorded. He specifically record that the parties had concurred with what they have stated and they have no objection in the matter.

The Collector called the report from the Mamlatdar and Enquiry Officer, City Survey, Daman and directed the Survey Mamlatdar, Daman to effect actual partition as provided under Section 61(5) of the Goa, Daman and Diu Land Revenue Code, 1968. The necessary fees for the partition was also paid. However, till date, the partition could not be effected and the order passed by the Collector still is only on paper.

3. Faced with this difficulty, the plaintiff filed a suit seeking restraint order against defendants, in absence of

the partition being effected and on Ex. 5, restrain order came to be granted in his favour.

4. In any case by depicting the possession of the Survey No. 493/8 and 493/9 in the form of a map produced by learned counsel for the appellant, which is taken on record and marked 'X' for identification, the possession of the Appellant over the suit property can be fortified and since it is not disputed by the learned counsel for the respondent that the plaintiff is entitled for 392.00 sq. mts of land in survey No. 493/8-A and area of 88.00 sq.mts in survey no. 493/9-A, the order passed by the learned Judge require a slight modification in the interest of both parties, which can continue to govern the parties till the partition is effected in terms of order of the Collector.

The modification, being that the appellant [original defendant] shall not enter into the area belonging to the plaintiff which is described as suit property, restricting to the share of the plaintiff.

5. The impugned order dated 11<sup>th</sup> February, 2022 stand upheld, as it is, except the condition no. 2(b) which is modified as above.

The parties shall continue to maintain the said position till actual partition is effected in terms of the order passed by the Collector, Daman.

**AO 265/ 2022**

1. The Appellant is the defendant in Special Civil Suit No. 19/2021 filed in the Court of Civil Judge Senior Division Daman and is aggrieved by order dated 11<sup>th</sup> February, 2022 passed by the Civil Judge Senior Division, Daman. By the said order the defendant no. 1 is restrained from parting with possession of the suit properties, selling, transferring, creating encumbrance or alienating the suit properties, creating third party right, title and interest therein and carrying out any construction therein.

2. The background facts would reveal that the Special Civil Suit is filed by one Kanaiyalal Manibhai Patel i.e. respondent herein for permanent injunction and declaration that the suit property described in Schedule A and claiming that this property which belongs to the father of the plaintiff and the defendant and he is also entitled for a share in the said property.

3. In response to the claim in the suit, a written statement came to be filed by the defendant clarifying, that though the plaintiff and defendant are legal heirs of one Manibhai Patel who passed away on 16<sup>th</sup> February, 2009 and is admitted that the plaintiff is having equal share in the property left behind by his father which is ancestral property wherein both of them are co-owners.

The defendant categorically, set out the details of the property, which is held by him as occupant, in pursuant to declaration issued in his favour under The Dadra and Nagar Haveli Land Reforms Regulations, 1971 and he has been conferred with the occupancy right as per Section 4 of the said Act. In the written statement, the defendant has categorically distinguished the land which are occupied by him as occupant and the lands owned by his father, in which he did not dispute that the plaintiff will also have a share.

4. In the application filed under Order 39 Rule 1 of the Code of Civil Procedure, 1908 the learned judge has however misread, the written statement and it is recorded that, in paragraph 13 the defendant no. 1 has admitted that their father died leaving behind various agricultural and non-agricultural land bearing Survey No. 495/3, 495/2, 491/1, 494/1, 494/2, 492/3, 468/2, 468/4, 493/10, 493/4, 493/8, 493/9 and 570/3 situated in village Dabhel, Nani Daman. An admission as above is one of the ground which justified the learned judge in passing the injunction order. The said observation is however erroneous, as the defendant has only admitted share of the plaintiff, in the property of their father.

5. However that is not the sole ground, in granting injunction in favour of the plaintiff, since in paragraph 14 and 15, the learned judge has recorded a prima facie in favour of the plaintiff, about his possessing undivided

share in the suit property and if injunction is not granted irreparable loss would be caused to him, since he would be deprived of his share in the land. Considering the aforesaid factors, the relief is granted in his favour.

6. I see no legal infirmity in this order. Though admission of defendant no. 1 in the written statement which has been recorded in paragraph 13 of the order is not correct, reading the written statement with the aforesaid clarification, the impugned order is upheld and Appeal from Order is dismissed.

**( SMT. BHARATI DANGRE, J.)**