NEUTRAL CITATION
2026:GUJHC:10564

Reserved On : 13/01/2026
Pronounced On : 10/02/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 48 of 2023
With
R/APPEAL FROM ORDER NO. 41 of 2024
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/APPEAL FROM ORDER NO. 41 of 2024
With
R/APPEAL FROM ORDER NO. 42 of 2024
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/APPEAL FROM ORDER NO. 42 of 2024
With
R/APPEAL FROM ORDER NO. 43 of 2024
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/APPEAL FROM ORDER NO. 43 of 2024
With
R/CIVIL REVISION APPLICATION NO. 49 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI Sd/-

==========

Approved for Reporting	Yes	No
	Yes	

==========

YUSUFBHAI WALIBHAI PATEL & ORS.
Versus
ZUBEDABEN ABBASBHAI PATEL & ORS.

==========

Appearance:
CIVIL REVISION APPLICATION NO. 48 of 2023
SR. ADV. MR. MIHIR JOSHI assisted by MR. ISA HAKIM(10874) for the Applicant(s) No.1.1,1.2,1.3,1.4,1.5,1.6,1.7,2.1,2.2,2.3,2.4,2.5,2.6,2.7,3,4,5,6
SR. ADV. MR. PERCY KAVINA assisted by MR JAMSHED KAVINA(11236) & MR MEET D KAKADIA(11896) for the Opponent(s) No. 1
SR. ADV. MR. DHAVAL DAVE assisted by MR MOHMEDSAIF HAKIM(5394) for the Opponent(s) No. 3,4,5,6,7,8
NOTICE SERVED BY DS for the Opponent(s) No. 2.1,2.2,2.3,9.1,9.2,9.3,9.4

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

APPEAL FROM ORDER NO. 41 of 2024
SR. ADV. MR. MIHIR JOSHI assisted by MR ISA HAKIM(10874) for Appellant(s) No.1,1.1,1.2,1.3,1.4,1.5,1.6,1.7,2,2.1,2.2,2.3,2.4,2.5,2.6,2.7,3,4
SR. ADV. MR. PERCY KAVINA assisted by MR JAMSHED KAVINA(11236) for the Respondent(s) No. 1
SR. ADV. MR. DHAVAL DAVE assisted by MR MOHMEDSAIF HAKIM(5394) for the Respondent(s) No. 3,4,5,6,7,8
NOTICE SERVED BY DS for the Respondent(s) No. 2.1,2.2,2.3

APPEAL FROM ORDER NO. 42 of 2024
SR. ADV. MR. DHAVAL DAVE assisted by MR MOHMEDSAIF HAKIM(5394) for the Appellant(s) No. 1,2,3,4,5,6
SR. ADV. MR. PERCY KAVINA assisted by MR JAMSHED KAVINA(11236) for the Respondent(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 6.1,6.2,6.3

APPEAL FROM ORDER NO.43 of 2024
MR. MTM HAKIM assisted by RIZWAN SHAIKH(7146) for Appellant(s) No. 1,2
SR. ADV. MR. PERCY KAVINA assisted by MR JAMSHED KAVINA(11236) for the Respondent(s) No. 1
SR. ADV. MR. DHAVAL DAVE assisted by MR MOHMEDSAIF HAKIM(5394) for the Respondent(s) No. 10,11,12,7,8,9
NOTICE SERVED BY DS for the Respondent(s) No. 6.1,6.2,6.3

CIVIL REVISION APPLICATION NO. 49 of 2023
SR. ADV. MR. DHAVAL DAVE assisted by MR MOHMEDSAIF HAKIM(5394) for the Applicant(s) No. 1,2,3,4,5,6
SR. ADV. MR. MIHIR JOSHI assisted by MR ISA HAKIM(10874) for Opponent(s) No.4.1,4.2,4.3,4.5,4.6,4.7,4.8,5,6,7,8
SR. ADV. MR. PERCY KAVINA assisted by MR JAMSHED KAVINA(11236) & MR MEET D KAKADIA(11896) for the Opponent(s) No. 1
NOTICE SERVED BY DS for Opponent(s) No.2.1,2.2,2.3,4.4.1,4.4.2,4.4.3,4.4.4
==========

CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

CAV JUDGMENT

1. The captioned batch of revision arise from the orders passed below Exhibit-33 and Exhibit-44 in Special Civil Suit No.132 of 2021 by the 21st Additional Senior Civil Judge, Vadodara.

1.1 The two captioned Civil Revision Applications arise

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

from the common order dated 11.10.2022, rejecting the application filed by defendant Nos.1 to 4 and defendant Nos.6 to 11 under Order VII Rule 11 of the Code of Civil Procedure (hereinafter referred to as 'the Code') for rejection of the plaint.

1.2 The captioned three Appeal from Orders arise from the order dated 02.02.2024 passed below Exhibit-5, partly allowing the application for temporary injunction under Order XXXIX Rule 1 & 2 of 'the Code' by the original plaintiff.

1.3 The above referred CRAs and AOs since were tagged, Honourable Chief Justice by order dated 24.03.2025, placed the AOs along with the CRA before the Court having the roster of Civil Revision Applications.

1.4 In the aforesaid premises, the captioned batch of matters are decided by this common order with the consent of learned Senior Counsel/learned Counsel appearing for the respective parties.

2. For convenience, the parties are referred to as per their original status before the learned Court below.

3. **The brief facts of the case are as under:-**

3.1 Plaintiff is a daughter of deceased - Valimohammad Kaduji and deceased - Ayesha Valimohammad Kaduji. She filed Special Civil Suit No. 132 of 2021 for relief of administration of the estate of deceased - Valimohammad Kaduji and deceased -

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

Ayeshabibi Valimohammad Kaduji. Defendant Nos.1 to 4 are the brothers of the plaintiff, defendant No.5 are the heirs of the sister of the plaintiff and rest of the defendants are purchaser of the property claimed to be immovable property of deceased - Valimohammad Kaduji and his wife deceased - Ayeshabibi Valimohammad Kaduji.

3.2 The plaintiff, in the alternate relief, claimed compensation of Rs.50 Crores along with interest, as well as relief of permanent injunction. In para 3A of the plaint, plaintiff claimed that the immovable properties prescribed in para 3A (referred to as Lot-3A, for short) of the plaint are either purchased by father Valimohammad Kaduji or father has purchased the same in name of the defendant Nos.1 to 4, i.e. the plaintiffs' brothers at different intervals, from the gains of the earning and as such, it is self-acquired properties of deceased - Valimohammad Kaduji and his wife.

3.3 It is further averred by the plaintiff in para 3B of the plaint that the defendant Nos.1 to 4, i.e. her brothers, having sold the ancestral properties, have purchased the immovable properties prescribed at para 3B (referred to as Lot-3B, for short).

3.4 Plaintiff came out with a case that when she married, she was too young. Defendant Nos.1 to 4 after the death of the father, deceased - Valimohammad Kaduji, were managing the properties stated in Lot-3A and Lot-3B and were giving false promises to her to give the share. Plaintiff, being the real sister

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

as well as having an inter-se relationship of being the in-laws of each other's son and daughter, trusted upon the wordings of the defendant Nos.1 to 4. However, defendant Nos.1 to 4, at the different intervals of time, sold the various parcel of land as well as immovable properties without giving any share and were further assuring the plaintiff that the immovable properties in the Akota and Tandalja area since remained in the hands of the defendant Nos.1 to 4, they shall give the share to plaintiff from the immovable properties from the Tandalja area. However, according to plaintiff, later on, the defendant Nos.1 to 4 in connivance with the other defendants, started development of immovable properties at Tandalja in the name of Jumeirah Park and as such, declined to grant any share to the plaintiff, which ultimately led the plaintiff to file the suit seeking various reliefs stated in para 22 of the plaint.

3.5 Firstly, among them is to grant the share as per the *Shariat* in the immovable properties stated in Lot-3A. Likewise, the share is also claimed in the immovable property in Lot-3B. Alternatively, the plaintiff claimed compensation of Rs. 50 Crores from the defendant Nos.1 to 4 in lieu of her shares in the immovable properties stated in Lot-3A. It is also claimed by the plaintiff that the defendant has purchased the immovable properties in Lot-3B from selling the immovable properties stated in para 3A, i.e. Lot-3A. Hence, the plaintiff be given a share in the properties of the defendant Nos.1 to 4.

3.6 Further, it is claimed that all the sale deeds executed from time to time be declared null and void and not binding to

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

the plaintiff. Further, it is claimed by way of perpetual injunction that defendants have no whatsoever right to develop the land of Survey Nos.401, 402, 407 and 431 of the Tandalja area and plaintiff's share be divided from these parcels of the land and the defendants be restrained from developing the Jumeirah Park in land of Survey No.431. The Revenue Entry mutated for land of Survey Nos. 401, 402, 407 and 431 of Tandalja area be declared null and void, and not binding to the plaintiff.

3.7 Plaintiff be further given a share from the land of Survey No. 212/1 of village Akota. Further, plaintiff be given a share from the remaining land of Survey Nos.161/1 and 297 of village Akota and in the perpetual injunction, sought to restrain the defendants from developing or selling the immovable properties, which remains with the defendants on the date of filing of the suit.

3.8 In the aforesaid suit proceedings, plaintiff filed application Exhibit-5 under Order XXXIX Rule 1 & 2 of 'the Code' read with Section 151 of 'the Code' seeking the interim relief prayed in terms of the relief prayed in the suit. After hearing learned advocates for both the sides, the learned 12th Additional Senior Civil Judge, Vadodara, vide order dated 02.02.2024 partly allowed the injunction application and passed the following order, which is reproduced as below (Translated from Gujarati to English):-

> *" - The present application of the plaintiff vide Exhibit-5 is hereby partly allowed.*
>
> *- Accordingly, the defendants of this suit are hereby*

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

directed that, to maintain the title and ownership of the suit properties namely: the land bearing Revenue Survey No. 161 paiki 1 of village Akota, admeasuring Hectare-Are 00-06-97 sq. mtrs., and the property bearing Revenue Survey No. 297 excluding the acquired portion; and the properties of moje Tandalja bearing Survey Nos. 404, 405 and 406, City Survey No. 622, being the property known as "Shubham Party Plot"; and the open plot admeasuring 1317 sq. mtrs., forming part of City Survey No. 621 paiki of situated at moje Tandalja, near Bina Nagar Society; and the property bearing Survey No. 401 paiki 1 of village Tandalja, admeasuring Hectare-Are 0-10-49 sq. mtrs.; and the land bearing Survey No. 428 of village Tandalja, admeasuring Hectare-Are 00-26-09 sq. mtrs.; and the land bearing Survey No. 430/1 paiki 1 of moje Tandalja, admeasuring Hectare-Are 00-24-37 sq. mtrs.; and the property bearing Survey No. 431 paiki of moje Tandalja, out of total area Hectare-Are 1-21-41 sq. mtrs., admeasuring 8972 sq. mtrs., wherein the defendants of this suit Nos. 12 and 13 have constructed "Zumerah Park" Apartment, and from the said property, except those units in respect of which sale deeds have already been executed, the remaining properties which are yet to be sold as on the date of this order; and the remaining land admeasuring 3169 sq. mtrs. of Survey No. 431; and the properties purchased by defendant No. 1, situated at moje Chikhodra, Block/Survey No. 104/A admeasuring Hectare-Are 0-13-55 sq. mtrs., Survey No. 104/B admeasuring Hectare-Are 0-22-20 sq. mtrs., Survey No. 105 admeasuring Hectare-Are 0-33-39 sq. mtrs., Survey No. 106 admeasuring Hectare-Are 0-87-91 sq. mtrs., Survey No. 111 admeasuring Hectare-Are 0-26-30 sq. mtrs., Survey No. 306 admeasuring Hectare-Are 1-92-23 sq. mtrs.; and the land situated at village Dhaniyavi bearing Survey No. 157 admeasuring Hectare-Are 1-75-03 sq. mtrs.; and the land situated at moje Vora Gamdi bearing Survey No. 38 admeasuring Hectare-Are 1-70-98 sq. Mtrs.; and the properties purchased by defendant No. 2, situated at moje Dhaniyavi, Block Survey No. 118/A admeasuring Hectare-Are 0-09-40 sq. mtrs., Survey No. 118/B admeasuring Hectare-Are 0-51-49 sq. mtrs., Survey No. 118/C admeasuring Hectare-Are 00-09-10 sq. mtrs., Survey No. 119 admeasuring Hectare-Are 1-29-50 sq. mtrs.; and the properties purchased by defendant No. 3, situated at moje Dhaniyavi, bearing Survey No. 172

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

admeasuring Hectare-Are 02-24-60 sq. mtrs., Survey No. 162/A admeasuring Hectare-Are 01-42-64 sq. mtrs., Survey No. 162/B admeasuring Hectare-Are 0-00-68 sq. mtrs., Survey No. 176 admeasuring Hectare-Are 1-80-08 sq. mtrs.; and the properties purchased by defendant No. 4, situated at moje Dhaniyavi, bearing Survey No. 207 admeasuring Hectare-Are 01-24-44 sq. mtrs., and Survey No. 320 admeasuring Hectare-Are 2-01-33 sq. mtrs.; in all the aforesaid properties, to the extent of the share of defendants Nos. 1 to 4, with respect to ownership rights thereof, and with reference to the land bearing Survey No. 435 paiki 1 of moje Tandalja, admeasuring Hectare-Are 00-20-23 sq. mtrs., until the final disposal of the suit.

- The costs of the application shall abide by the final outcome of the suit."

3.9 Being aggrieved and dissatisfied by the aforesaid order passed below Exhibit-5, in total three Appeal from Orders are filed being AO No.41 of 2024 to AO No.43 of 2024 by the defendants of the suit. In the meantime, two applications were moved vide Exhibit-33 and Exhibit-44 by defendant Nos.1 to 4 and defendant Nos.12 and 13 respectively, under Order VII Rule 11 of 'the Code' to reject the plaint, principally, on the ground of plaint barred by Law of Limitation and having clouded cause of action. The order dated 11.10.2022 disfavours the application filed by defendant Nos.1 to 4 and defendant Nos.12 and 13. The common order passed below Exhibit-33 and Exhibit-44 has rejected both the applications. Being aggrieved thereof, defendants have filed the CRA Nos.48 of 2023 and 49 of 2023.

3.10 In short, the contention raised by the defendants can be conceptualized that during the lifetime of Valimohammad Kaduji between the year 1967 and 1975, several parcels of land

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

were purchased by defendant Nos.1 to 4, i.e. sons of deceased - Valimohammad Kaduji, in their individual capacity and mutation of the said immovable property were made in the revenue record in their names as owner.

3.11 It is further contended that, on 25.04.1983, a family arrangement was executed among the defendants No.1 to 4 settling the aspect that the lands owned by Valimohammad Kaduji and his sons, i.e. defendant Nos.1 to 4, were to be distributed amongst the sons. It is also agreed that on sale of all or any land thereof, Rs.30,000/- each was to be paid to both the daughters, i.e. plaintiff and defendant No.5. The said family arrangement recorded that residential properties/house in Akota will be falling in the share of the sons.

3.12 It is further contended thereafter that, on 10.08.1984, Valimohammad Kaduji expired. It is further contended that subsequent thereto, on 15.09.1984, Mutation Entry No.1606 was mutated in favour of the defendant Nos.1 to 4 being the inheritance Mutation Entry. The notice under Section 135D of the Bombay Land Revenue Code, 1879 was also served to the deceased mother and defendant No.5. The Revenue Officers had recorded the statement of deceased mother – Ayeshabibi Valimohammad and defendant No.5 and they had consented to mutate the name of the sons/brothers, relinquishing their rights if any. Similarly, the entries were also mutated for other parcels of the land. In 1995, the mother – Ayeshabibi Valimohammad was expired.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

3.13 The various parcels of the land stood in the name of defendant Nos.1 to 4 were sold from the year 1999 to 2005 in front and in knowledge of the plaintiff and defendant No.5. They did not object at any point of time. This includes the various immovable properties at Tandalja are, having the revenue Survey Nos. 410/2, 430/1, 404, 432, 406, 410/1, 405, 407, 435 Paiki, 401, 428 and 402 sold to defendant Nos.6 to 11 by the defendant Nos.1 to 4.

3.14 In a immovable property at village Akota, acquisition was carried out by the State Government and the State Government paid the compensation to the plaintiff and defendant Nos.1 to 5. Land of Revenue Survey No.431 of Tandalja was sold by defendant Nos.2 to 4 to defendant Nos.12 and 13 for development. Subsequently, immovable property at Tandalja were converted for NA use and large scale constructions were carried out and transacted in favour of several third parties. In all, at no point of time, plaintiff claimed any right, but suddenly rose to file the suit to disturb the title of the parcels of the land stated in Lot-3A and Lot-3B, most of which are now lying in favour of some third parties.

4. In the aforesaid factual background, I have heard learned Senior Advocate Mr. Mihir Joshi assisted by Mr. Isa Hakim appearing for the original defendant Nos.1 to 4, Senior Advocate Mr. Dhaval Dave assisted by learned advocate Mr. Mohmedsaif Hakim appearing for the original defendant Nos.6 to 11, learned advocate Mr. MTM Hakim assisted by learned advocate Rizwan Shaikh for the original defendant Nos.12 and

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

13, and Senior Advocate Mr. Percy Kavina assisted by learned advocate Mr. Jamshed Kavina & learned advocate Mr. Meet D. Kakadia for the original plaintiff in the aforesaid CRAs and AOs.

The written synopsis and submission along with the list of authorities tendered by them are taken on record.

4.1 The heirs of original defendant No.5, i.e. sister of the original plaintiff, & legal heirs of original defendant No.2.4, i.e. legal heirs of deceased son of original defendant No.2, though served have chosen not to appear.

5. **Submissions in Civil Revision Applications**

5.1 Learned Senior Counsel appearing for the revisionists mainly argued that the learned Court below erred in rejecting the application under Order VII Rule 11 of 'the Code'. The order impugned in these revisions failed to consider that the plaint is hopelessly barred by the law of limitation.

5.2 They would further say that, even if the statements made in the plaint are considered to be true and correct, the plaintiff was oust from the land owned by the father upon his death on 10.08.1984 and subsequently, again oust upon the death of her mother in 1995. It is further argued that the Mutation Entry No.1606 and Mutation Entry No.2318, posted in knowledge of the plaintiff ousting her name, whereby she recorded her statement to the Revenue Officers, makes it abundantly clear that plaintiff was knowing fully well about her alleged share has been denied much prior to filing of the suit. Thus, the suit was hopelessly barred.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

5.3 It is also argued that defendant Nos.1 to 4 have dealt with the properties stated in Lot-3A and Lot-3B as their self-acquired and undivided properties, openly and since decades. Yet, plaintiff did not proceed to question the act, suggests clearly that suit is time-barred and filed with mala fide motive. Thus, the cause of action pleaded by the plaintiff is totally barred by the limitation on account of ouster of plaintiff, much prior to filing of the suit, maybe construed from the year 1984, the year in which father was expired, or in the year 1995 when the mother was expired, or in the year 1984 when the revenue entries were mutated, but by any count, the plaint was hit by Law of Limitation.

5.4 It is also argued that by clever drafting, plaintiff has camouflaged the cause of action. It is further argued that, even if all the previous events, whereby plaintiff ousted from her share in the immovable property are ignored, the statement in the plaint suffice to say that plaintiff came to know about execution of sale deed dated 18.01.2019 for immovable properties at Tandalja in favour of defendant Nos.12 and 13, whereupon the construction of Jumeirah Park has been put up, would also make suit filed in year 2021 clearly beyond limitation.

5.5 It is also argued by the learned Counsel that the cause of action pleaded by the plaintiff is masquerade, hiding the truth, there is no actual and real cause of action, which permits the plaintiff to secure the decree. In absence of honest to goodness cause of action, plaintiff cannot put the plaint to disturb proprietary rights of the defendants.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

5.6 Mainly upon the aforesaid submissions, learned Counsel appearing for the revisionists – defendants submitted to upturn the common order passed below Exhibit-33 and Exhibit-44, by which learned Court below denied to reject the plaint and submitted to reject the plaint by allowing these revisions.

6. As against the aforesaid submission, the learned Counsel appearing for the original plaintiff, supporting the common order passed below Exhibit-33 and Exhibit-44, submitted that the learned Court below have passed the correct, just and legal order and deserves no interference under Section 115 of 'the Code'.

6.1 It is further argued that, in the plaint, a specific statement has been made by the plaintiff that first time she realised that her share in the immovable property in Lot-3A and Lot-3B was denied when the defendants No.1 to 4, who had given assurance to grant the share from the immovable properties of Survey Nos.431 of the Tandalja, behaved in a perverse manner and sold it to defendant Nos.12 and 13 being the sons of defendant No.3 and 4 being an eye-wash sale to develop the Jumeirah Park and to use the other parcel of the land as Shubham party plot.

6.2 It is also argued by the learned Counsel for the plaintiff that when a agreement produced at Mark-4/224 came to the notice of the plaintiff, used by the defendant Nos.1 to 4 as a shield, claiming it to be the family settlement, denying the right and share of the plaintiff in the ancestral property and

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

immovable property purchased by the father, plaintiff having been felt cheated, immediately filed suit claiming various relief. It is further submitted by the learned Counsel for the plaintiff that suit is not simpliciter for partition of the joint family property, but is a suit for administration of the estate, whereby first right belongs to the person, who has spent the burial death-bed expenses of the deceased. Secondly, rights of persons, who are the Creditors, in other words the persons, whom the deceased has to pay any outstanding amount, and thereafter, property to be partitioned amongst the heirs, the residuaries and distinct kindred. Therefore, the suit for administration could not be said to be barred by any limitation until it is established that the amount of burial death-bed expenses and the outstanding amount owed by the deceased has been paid to its creditors.

6.3 In the aforesaid submission, it was argued that the learned trial Court has correctly assumed the jurisdiction to decide the administration of the suit and held that, statement in plaint are not barred by provision of law and/or cause of action pleaded by plaintiff needs trial to decide plaintiff's claim.

6.4 It is further contended by the learned Senior Counsel for the plaintiff that the revenue entries does not extinguish the title of the plaintiff and confers any exclusive title upon the defendant Nos.1 to 4. The mutation entry having a value no more than for a fiscal purpose, cannot be claimed to oust the plaintiff's suit for administration of the property. It is also argued by learned Senior Counsel that the family agreement at Mark-4/224 enumerates that though some of the properties are

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

procured in the name of defendant Nos.1 to 4, it is procured from the gain of the earnings from the father, and therefore, it is a joint family property.

6.5 Compensation in lieu of share are also sought by the plaintiff in the tune of Rs.50 Crores. It is further submitted even for that reason, the suit is maintainable before the learned Civil Court. The plaint, hence cannot be rejected in part. Even if one of the relief is maintainable before the Civil Court, the suit is to be tried and adjudicated permitting both the parties to lead the evidence.

6.6 In the premises of aforesaid submission, it is submitted that in a suit, which is preferred by the plaintiff, the limitation is a mixed question of law and fact and cannot be decided at the threshold, so also cause of action, as it need trial. Thus, it is submitted that learned trial Court has rightly decided plea of rejection of plaint.

6.7 In support of the aforesaid submission, learned Counsel relied upon the following judgments:-

> *"**i.) P. Kumarakurubaran v. P. Narayan,*** reported in ***2025 (0) AIJEL SC 75184***, para 12.1, 12.2 and 13.
>
> ***ii.) Bhanuben Chandubhai Patel v. Kalidas Shankarbhai Patel***, reported in ***2025 (0) AIJEL HC 250958***, para 12 to 15.
>
> ***iii.) Daliben Valjibhai v. Prajapati Kodarbhai Kachrabhai***, reported in ***2024 (0) ALJEL SC 74555***, paras 9, 11, 12, 13.
>
> ***iv.) Patel Chandrikaben D/o Haribhai Makabhai Patel***

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

And W/o Gadhvi Amirdan Nathubhai v. Patel Manguben Wd/o Haribhai Makabhai, reported in ***2025 (0) AIJEL HC 252089***, paras 14, 16-18, 20.

v.) Shaukathussain Mohammed Patel v. Khatunben Mohmmedbhai Polara, reported in ***2019 10 SCC 226***, paras 6-8."

7. **Submissions in AOs**

7.1 Learned Counsels and learned advocates appearing for the respective appellants in the AOs, jointly argued that the learned Court below seriously erred in understanding the discretionary jurisdiction under Order XXXIX Rule 1 & 2 read with Section 151 of 'the Code', more particularly by giving a go by to the Principle of Acquiescence and Principle of Estoppel.

7.2 Further argued that, plaintiff, having been noticed that suit is filed after 37 years after the death of Valimohammad Kaduji in respect of the rights claimed in lands owned by defendant Nos.1 to 4 from 1984 till 2021, the very delay attracts the application of the Principle of Acquiescence and disentitles the plaintiff to have the equitable relief of injunction.

7.3 In support of this submission, reliance has been placed upon the submission of ***Ambalal Sarabhai Enterprise Ltd. v. KS Infraspace LLP Ltd.***, reported in ***(2020) 5 SCC 410*** (para 19) & in case of ***Kishorsinh Ratansinh Jadeja v. Maruti Corpn.***, reported in ***(2009) 11 SCC 229*** (Para 41).

7.4 It is further argued that the Revenue Entries No. 1606 and 2318 were made in favor of the defendant Nos.1 to 4 in

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

1984 upon the statement made by the plaintiff along with sister - defendant No.5 and deceased mother, never have been challenged up till now, clearly makes a case that plaintiff has no prima-facie case and she has no share, but the filing of the suit is an attempt to disturb the title of the various parcels of land stated in Lot-3A and 3B, with view to coerce and pressurize the defendant.

7.5 The reference has been made to the judgment in the case of ***Anandiben Jamabhai Patel v. State of Gujarat***, reported in ***(2010) 3 GLR 2601*** and judgment in case of ***Shantaben D/o Ranchodbhai Patel and Wd/o Ramanbhai Jethabhai Patel v. Heirs and Legal Repres. of Decd. Shanabhai Ranchhodbhai Patel***, rendered in ***Appeal from Order No.222 of 2015*** of this Court.

7.6 It is also argued by the learned Counsels that the learned trial Court completely allowed the family arrangement dated 25.04.1983 to go by, which sufficiently covers the right of the plaintiff if at all exists in terms of monetary terms by entitling her and defendant No.5, i.e. the other sister, to an amount of Rs.30,000/- in lieu of their share in the estate of their father.

7.7 It is further argued by the learned Counsel that the learned Court below seriously erred in not considering that this family arrangement was acted in terms of Mutation Entry Nos.1606 and 2318, whereby statement of the plaintiff and defendant No.5 and deceased mother have been recorded, which acknowledges the execution of the family settlement.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

7.8 It is further argued that the sale deed in regard to the various parcels of the land in favor of the other defendants are executed in the eyes and knowledge of the plaintiff. The plaintiff and defendant Nos.1 to 4, apart from being the siblings, are also inter-se in-laws of the son and daughter of each other, as such relation is permitted in Muslim Law. Yet, plaintiff did not claim share or allege right to claim in the Lot-3A & Lot-3B, and waited till the scheme of Jumeirah Park is developed by defendant Nos.12 and 13. Therefore, it is a clear tactic to pressurize the defendants. Nonetheless, such pressure tactics clearly suffers from inordinate delay and latches.

7.9 It is also argued by the learned Counsel that the learned trial Court also failed to understand or appreciate that the lands were sold to defendant Nos.6 to 11 between 1999 to 2005, again within the knowledge of the plaintiff and sold to defendant Nos.12 and 13 in the year 2019, again within the knowledge of the plaintiff and yet, no suit was filed to challenge such sale deed within the time period or even thereafter.

7.10 It is further argued that no prima-facie case exists in the favor of the plaintiff, as plaintiff remained silent for years together after 1984, cannot be granted a relief, which could not be granted even at the final outcome of the suit.

7.11 It is further argued that if at all plaintiffs succeed in the suit, her share is so negligent that it can be compensated in terms of money, which is already recognized in the family settlement executed between the parties in 1983 in presence of

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

the father - Valimohammad Kaduji. Thus, there is no irreparable loss to the plaintiff. The balance of convenience tilts in favor of the defendants as impugned order completely overlooked that the land or immovable properties in Lot-3A are sold, developed and constructed upon since long created third party interest as also found in the eyes of the plaintiff. These are not the clandestine transactions.

7.12 It is further argued by the learned Counsel that the immovable property stated in Lot-3B are the immovable property purchased by the defendant Nos.1 to 4 after the demise of the father. They are self-acquired properties of defendant Nos.1 to 4, having changed the hands multiple times, even prior to filing of suit. Yet the learned Court below erred in considering that these immovable property in Lot-3B are purchased from selling the immovable property stated in Lot-3A, and therefore, plaintiff has share in such property. Hence, argued that learned trial Court has erred in believing that plaintiff has prima-facie case.

7.13 It is argued that the sale deed having passed the rigors of the Registration Act, 1908, hold a strong presumption of correctness and genuineness and cannot be likely called sham. This was argued in relation to execution of multiple sale deed in regards to various parcels of land being subject matter of suit, in favor of third party.

7.14 It is further argued that the impugned order passed below injunction application is just the reproduction of Exhibit-79, the plaintiff having come to know that most of the land

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

stated in the plaint have been sold, without amending the plaint, plaintiff produced Exhibit-79 on affidavit and asked that plaintiff is only claiming relief in terms of Exhibit-79. The learned trial Court regurgitated the statement made in Exhibit-79 to grant the interim-relief overlooking the relief claimed in the plaint or in the injunction application, which suffice to infer the illegality of the impugned order.

7.15 In the premises of aforesaid submission, the learned Counsel appearing for the appellants - original defendants, vehemently submitted that the learned Court below has erred not only in understanding the Principle of grant or refusal of injunction application, but also overlooked the settled facts coming from the case and though it was not a case of exercising equitable or discretionary jurisdiction, by impugned order the learned Court below issued injunction in respect of the land already developed and constructed by defendant Nos.6 to 11, who are third parties, the unsold flats constructed by defendant Nos. 12 and 13 and self-acquired lands of defendant Nos.1 to 4 and has thereby, caused irreparable prejudice to the defendants.

7.16 In the contours of the aforesaid arguments, the learned Counsel appearing for the appellants submitted to allow these Appeal from Orders by quashing and setting aside the impugned order.

8. In converse, learned Senior Counsel appearing for the respondent – original plaintiff supported the impugned order passed by the learned Court below, arguing that it is a well

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

reasoned order and deserves no interference under the limited scope of Order XLIII Rule 1 of 'the Code' as the discretion has rightly been exercised by the learned Court below. It is further argued that exercise of the discretionary jurisdiction by the learned Court below cannot be said to be in ignorance of the principles of settled law as impugned order is far from being arbitrary, capricious or perverse. Thus, in this Appeal from Order, this Court since enjoying the limited jurisdiction, should not interfere with the discretionary order passed by the learned Court below.

8.1 To support the argument, reference has been made to the judgment in the case of ***Wander Ltd. v. Antox India P. Ltd.,*** reported in ***1990 (Supp.) SCC 727***, para 14.

8.2 It is further argued that the subject matter is an immovable property. Plaintiff claims her share in the immovable property, claiming those which belongs to deceased father - Valimohammad Kaduji. She is undisputedly the legal heir of the deceased - Valimohammad Kaduji. defendant Nos.1 to 4 are the siblings and real brothers. The immovable property was admittedly purchased either during the lifetime of the father - deceased Valimohammad Kaduji or from the earning of deceased father in the name of defendant Nos.1 to 4 and other immovable property being the subject matter of the suit were purchased from the sale consideration received from the sale of other ancestral properties. Thus, learned Counsel also argued that if the immovable property changes the hand during the pendency of the suit, it would create a grave inconvenience and hardship

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

to the plaintiff in getting her share and even if she succeeded in the suit, she would not get the share. It is hence, argued that to save multiplicity of proceedings, learned trial Court has rightly granted interim-relief. Therefore, the learned trial Court has rightly passed the impugned order to maintain the status-quo as regards the immovable property, which are in hand of defendant Nos.1 to 4 and no third party interests are created thereof, thus, order impugned is equitable and safeguarding the rights of the plaintiff. He would submit that defendants, failed to make out a case of irreparable loss or damage, whereas prima-facie case already exist in favor of plaintiff. In the aforesaid circumstances, it is submitted that the learned trial Court has rightly passed the order of status-quo. In support of submission, learned Senior Counsel referred to the judgment in the case of ***Maharwal Khewaji Trust (Regd.) Faridkot v. Baldev Dass***, reported in ***2004 (8) SCC 488*** as well as the judgment in the case of ***Shreeji Corporation v. Pravinbhai Bhailalbhai Patel***, reported in ***2017 (0) AIJEL HC 237441*** and the judgment in the case of ***L/h. of Abdulhak Abdulmajid Munshi v. Habibunisa***, reported in ***2019 SCC Online Gujarat 6174***.

8.3 It is further contended that the revenue entries neither confer any title upon the defendant Nos.1 to 4 nor it extinguishes the pre-existing rights of the plaintiff in the immovable property of Lot-3A and Lot-3B. The revenue entries are for the fiscal purpose. It is a well settled principle. Therefore, upon mutation of Entry No.1606 and 2318, legally it cannot be said that plaintiff's share in the immovable property inherited on death of her father in a capacity of a tenant in common is oust.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

In support of his submission, reliance is placed upon the judgment in the case of ***Ajit Kaur Alias Surjit Kaur v. Darshan Singh (Dead) through Legal Representatives and Ors.***, reported in ***2019 (13) SCC 70***.

8.4 It is also argued that the family settlement produced at Mark-4/224 whether is genuine or it is a concocted document and whether defendant Nos.1 to 4 and father alone have right to execute such family settlement is a disputed question of facts. At the stage of deciding the injunction application, the Court ought not to have given too much weightage to the family settlement to decline the plaintiff's claim. Whether the family settlement is permissible in Mohammedan Law, whether plaintiff being not a signatory to family settlement is abide by it. Whether family settlement has been acted upon or not, etc. was to be decided during the suit proceedings, but the injunction application, decision of which is purely based upon the tentative finding based upon three golden principles, vis prima-facie case, balance of convenience and irreparable loss, should not be settled by evaluating evidence meticulously. In line of the above submission, learned Counsel appearing for plaintiff submits that learned trial Court has rightly discussed all the issue to safeguard plaintiff's right in suit property; deserve to be upheld. The submission has sought support from the judgment in the case of ***Daya Singh and Anr. v. Gurdev Singh (Dead) by Lrs and Ors.***, reported in ***2010 (2) SCC 194***.

8.5 In the premise of the aforesaid argument, learned Counsel submits that the affidavit at Exhibit-79 was filed to

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

facilitate the learned trial Court to show that which parcel of land remained vacant or open and which can be injuncted and the defendant be restrained from selling it as to save the right of the plaintiff. Thus, it is submitted that the learned trial Court has not committed any error, much less any error of understanding the facts or provision of the law. It is further argued that the impugned order cannot be termed as perverse, illegal, capricious, arbitrary or against the settled principles of law.

8.6 In the wake of the aforesaid arguments, it is submitted to dismiss all three AOs and to confirm the impugned order passed therein by the learned trial Court.

9. The detailed arguments canvassed by the learned Counsel for both the sides along with the authoritative pronouncements cited at the bar as well as the impugned orders and paper-book are considered.

10. ***Analysis and finding of the CRAs***

10.1 Defendant Nos. 1 to 4 and Defendant Nos. 11 and 12 have filed the application Exhibit-33 and Exhibit-44 under Order VII Rule 11 of 'the Code' to reject the plaint on the ground that the suit is barred by the law of Limitation and the cause of action pleaded by the plaintiff is murky and illusory, and does not give any right to seek the decree in her favor.

10.2 It is needless to observe that plea of rejection of the plaint under Order VII Rule 11 of 'the Code' is Plea of Demurrer,

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

whereby the party claiming the rejection of the plaint, has to accept that the statement made in the plaint is correct, genuine and further has to establish that on bare reading of the statement in the plaint, it is established that plaint is barred by the provision of the law. The defense led in the written statement or in the application filed under Order VII Rule 11 of 'the Code' are wholly irrelevant. Simultaneously, if a plea claimed that no real cause of action disclose from the plaint, the party, who raised such plea has to read the plaint in entirety and not a particular paragraph, or to pick up any paragraph from the plaint, to claim plea of absence of cause of action, if reading of the plaint in its entirety fails to disclose the bundle of facts causing cause of action or knitting the cause of action, then only the plaint can be rejected under Order VII Rule 11 of 'the Code'.

10.3 In ***Salim D. Agboatwala and Ors. v. Shamaji Oddhavji Thakkar and Ors.***, reported in ***(2021) 17 SCC 100***, the Supreme Court observed as under:-

> *"11. As observed by this Court in P.V. Guru Raj Reddy v. P. Neeradha Reddy [(2015) 8 SCC 331: (2015) 4 SCC (Civ) 100], the rejection of plaint under Order 7 Rule 11 is a drastic power conferred on the court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order 7 Rule 11.*
>
> *12. Again as pointed out by a three-Judge Bench of this Court in Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar [(2018) 6 SCC 422 : (2018) 3 SCC (Civ) 524], the plea regarding the date on which the plaintiffs gained knowledge*

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

of the essential facts, is crucial for deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit cannot be thrown out at the threshold.

13...

14. But a defendant in a suit cannot pick up a few sentences here and there from the plaint and contend that the plaintiffs had constructive notice of the proceedings and that therefore limitation started running from the date of constructive notice. In fact, the plea of constructive notice is raised by the respondents, after asserting positively that the plaintiffs had real knowledge as well as actual notice of the proceedings. In any case, the plea of constructive notice appears to be a subsequent invention."

10.4 A worthy reference is also required to be made in the case of ***Shakti Bhog Food Industries Ltd. v. Central Bank of India & Another***, reported in ***(2020) 17 SCC 260***.

10.5 In the backdrop of aforesaid legal provisions, if we examine the argument of learned Counsel for both the sides, more particularly in regards to the starting point of limitation for maintaining the suit for administration. Apt to notice that the plaintiff in a multifold prayers mainly prayed to administer the property of deceased - Valimohammad Kaduji and deceased - Ayeshabibi Valimohammad, whereby undisputedly the first right is of the person, who spent the burial and death-bed expenses and secondly, person, who has right to recover debt from deceased and thirdly, it is the heirs, residuary or distant kindred as the case may be, as parties are governed by the Muslim Law.

10.6 For the same, let refer Section 115 of the Mohammedan Law, 13th Edition by B.R. Verma, which states

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

how the Estate of a deceased Mohammedan is to be administered, it reads as under:-

> ***"Sec. 115. How the estate of a deceased Mohammedan is to be administered.****-The estate of a deceased Mohammedan shall be applied for satisfaction of claims in the following order:*
>
> *(1) reasonable funeral expenses and death-bed charges, including fees for medical attendance and board and lodging for one month previous to his death;*
>
> *(2) expenses of obtaining probate or letters of administration and other expenses on judicial proceedings necessary in administering the estate;*
>
> *(3) wages due from services rendered within three months of the death of the deceased by any labourer; artisan or domestic servant;*
>
> *(4) debts due from the deceased according to their respective priorities, if any:*
>
> *(5) legacies to the extent to which they are valid under Chapter XIII;*
>
> *(6) distribution among the heirs of the residue, if any, according to the provisions of Chapters X to XII."*

10.7 It is nobody's case that the first two exigencies are met with on death of Valimohammad Kaduji or on death of deceased - Ayeshabibi Valimohammad. plaintiff claims that she has a share in the immovable properties, which belongs to his father. Father purchased them in the name of brothers and later, brothers purchased immovable properties after selling the ancestral properties. Defendants claim that plaintiff is ousted on death of parents or on execution of the family settlement or on

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

mutation of revenue entries and selling of the immovable properties. However, all these issues need trial as they are disputed factual issues.

10.8 Article 110 of the Limitation Act, 1963, prescribes the limitation for a suit by a person excluded from a joint family property to enforce a right to share therein, the limitation is 12 years and when the execution becomes known to the plaintiff. Although in the present case, the defendant tried to put the case that the plaintiff knows that she is oust from the joint family property for more than 37 years ago, the issue of limitation in peculiar facts, becomes mixed question of facts and law and cannot be decided at the stage of deciding the application under Order VII Rule 11 of 'the Code'

10.9 The plaintiff, in her detailed statement made in the plaint, tried to gather the cause of action on the premise that at multiple times, the defendants assured to give her share, but did not give the share even in the property, which remains last, but instead started the development therein in the name of defendant Nos.12 and 13, being sons of defendant Nos.1 to 4 as Jumeirah Park, at that time the plaintiff noticed that now defendants are not ready to give the share in the immovable properties, the suit has been brought within 12 years therefrom from the exclusion of the plaintiff.

10.10 Whether the suit is maintainable on such pleading or not is not the question to be decided at threshold. At this juncture, the question of limitation in view of aforesaid, thus

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

becomes a mixed question of law and facts, to be decided during the trial. Plaintiff in suit may or may not succeed, but the statement in plaint cannot be said to be a statement barred by law, it deserves the consideration and trial. At this juncture, I may place reliance on the judgment of the Honourable Supreme Court in the case of ***Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar***, reported in ***(2018) 6 SCC 422*** and in case of ***Shakti Bhog Food (Supra)***

10.11 In the aforesaid analysis, I find no substance in these two revision applications.

11. ***Analysis and finding of AOs.***

11.1 As far as the three AOs are concerned, before I advert to the factual aspect of the case and to decide that whether the impugned order passed by the learned trial Court under the discretionary jurisdiction suffers from the vice of being arbitrary, perverse and against the settled principle of law or otherwise, let me refer the observation and finding of the Apex Court in the case of ***Wander Ltd. (Supra)*** wherein in para 14, the Supreme Court held as under:-

> *'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*

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

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.'

11.2 Also, in the case of ***Printers (Mysore) v. Pothan Joseph,*** reported in ***(1960) SCC Online SC 62***, the Supreme Court observed as under:-

'9. ... as has been observed by Viscount Simon in Charles Osention & 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.'

11.3 The Supreme Court in the case of ***Ramakant Ambalal Choksi v. Harish Ambalal Choksi***, reported in ***(2024) 11 SCC 351***, referred to the English decision in the case of ***Evans v. Bartlam***, reported in ***1937 AC 473 (HL)*** and ***Charles Osenton & Co. v. Johnston***, reported in ***1942 AC 130 (HL)*** and in para 25, 26 and 27 held as under:-

"25. In Evans (supra) case, Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

trial court exercised its discretion arbitrarily or incorrectly in the circumstances.

26. What flows from a plain reading of the decisions in Evans (supra) and Charles Osenton (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:

a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and

b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.

27. The principles of law explained by this Court in Wander's (supra) have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit."

11.4 In ***Neon Laboratories Ltd. v. Medical Technologies Ltd.***, reported in ***(2016) 2 SCC 672***, the Apex Court held that, *'the Appellate Court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.'*

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

11.5 In background of aforesaid settled principle of law, this Court has to examine that whether learned trial Court has exercised discretion correctly or palpably perverse, whereby perversity pertain to understanding of law or appreciation of perverse pleading or evidence.

11.6 It is admitted position that parties, i.e. plaintiff and defendant Nos.1 to 4 and defendant No.5 are siblings. Equally it is true that parties to dispute are Muslims and their right and obligations are governed by Principles of Mohammedan Law. Pleading in para 3A and 3B of the plaint are the seminal to decision, at least in injunction application. In para 4 of the plaint, the plaintiff came out with the case that series of the immovable properties stated therein have been purchased by the deceased father - Valimohammad Kaduji either in his own name or from his own earning in the name of the son to avoid the applicable of the Gujarat Tenancy and Agricultural Land Act, 1948 (hereinafter referred to as the 'Tenancy Act'). Thus, those properties fall in the category of **joint family property**, in para 3B of the plaint, plaintiff claims that the immovable properties enumerated therein are acquired by the defendant Nos.1 to 4 after selling the **ancestral properties**. These pleading are bedrock of relief claimed both in plaint as well as injunction application.

11.7 Let me firstly refer Section 122 of the Mohammedan Law, 13th Edition by B.R. Verma, which states that:-

> '***Sec. 122. Rights of the heirs arise on the date of a person's death.***__*The right of an heir comes into existence*

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

only on the death of the person of whom he or she is an heir.'

11.8 The Mohammedan Law recognizes the Principle or Latin phrase '*Nemo est heres viventis - A living person has no heir*'. An heir apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession.

11.9 In Mohammedan Law, inheritance descends and not ascends, unlike Hindu Law, plaintiff in the case on hand, firstly claimed that the immovable properties in Lot-3A is joint family property and in Lot-3B, she claims that those immovable properties are purchased from selling of the ancestral property.

11.10 In so far as claiming any property as an ancestral property is concerned, one has to claim right by birth, this idea or custom is not recognized by the tenets of the Mohammedan Law. As observed hereinabove, according to Mohammedan law, no one can have any share in the inheritance of another till after his death, the right of which are several and distinct and arises immediately on the death of the person of whom he is an heir (See ***Amir Dulhin v. Baij Nath Singh, I.L.R. 2021 Calcutta 311 at Page 316***)

11.11 The right of an heir apparent or a presumptive heir, who is entitled to succeed on the death of a person does not arise until on the death of such person. In the Mohammedan Law, right to succeed is nothing more than a *mere spes* i.e. mere chance of succession.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

11.12 The Principle of '*Nemo est heres viventis - A living person has no heir*' applies to Muslims. Thus, Muslim cannot claim any right by birth, unlike Hindu Coparcenors. Thus, there is no any interest in the properties in the lifetime of the father claiming it to be by birth.

11.13 Thus, the concept of ancestral properties is wholly foreign to the principle of Mohammedan Law as the Mohammedan Law does not recognize right by birth, but recognizes that a living person has no heirs. Likewise, the concept of 'joint family' is foreign to the Mohammedan Law. The concept of 'joint family' implies only to a group of members of many to one nuclear family together and not to a group of people living separately. Thus, the Mohammedan Law does not recognize the 'joint family' as a legal entity and does not provide any rule applicable to the concept of joint family property, as such. (See ***Shukrullah v. Zahura Bibi***, reported in ***AIR 1932 ALL. 512***)

11.14 The relationship between the members of the Mohammedan family is distinct from that of the members of the Hindu family. The presumption of the Hindu Law regarding the joint family, joint family property or joint family funds has got to be completely forgotten in deciding cases between the parties who are Mohammedans. To make out a case that the property is joint family property and to set up a case of partition, the plaintiff needed to show by sufficient material on record that it is a case either of partnership by express terms or by implication on account of the conduct of the parties or that there was a

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

relationship of principal and agent or any fiduciary relationship between the parties.

11.15 Had the plaintiff made out, such a case of partnership or agency or fiduciary relationship, he/she can take advantage of the provisions of the Indian Trusts Act and provisions arising out of the relationship of partners or principal or agent to claim the share in the property. There may be cases where often, the family remains undivided for some time after the death of the deceased, but there is no such thing in Mohammedan law, recognizing the concept of undivided joint hindu family or joint family property in sense of terms as used in Hindu Law (See ***Suddurtonnessa v. Majada, I.L.R. 3 Calcutta 694*** or ***Abdul Rashid v. Sirajuddin, AIR 1993 ALL. 206 at page 209***).

11.16 Apt to note that, Mohammedan succession is individual succession, it necessarily follows that there is no presumption, as in the case of a joint Hindu family, that any property has been purchased out of joint undivided property. It must be remembered that when the members of the Muslim family live in Commensality, they do not form a joint family in the sense in which that expression is used with regard to the Hindus, and in Mohammedan Law there is not, as there is in Hindu Law, any presumption that the acquisitions of the several members are made for the benefit of the joint family. The acquisition of the property by some members will not deemed to be for the benefit of all of them jointly.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

11.17 It is well recognized principle of Mohammedan Law that at the moment of death of Mohammedan, the estate of a deceased Mohammedan devolves on his heirs and they take the estate as tenants-in-common in specific shares. The theory of representation, as available under the Hindus, is not recognised under the Mohammedan Law and the interest of each heir is separate and distinct. (See: ***Abdul Huck v. Seetamsetti Narayan Naidu,*** reported in ***AIR 1928 Madras 14***).

11.18 Children in a Mohammedan family are not co-owners in the sense that what is purchased by one person ensures for the benefit of the others as the theory of representation is unknown to Mohammedan Law, and nay, there is no presumption that acquisition of one or more of the family are to be presumed to be for the benefit of the family, unless there is proof to the contrary. (See ***Mohd. Ibrahim v. Syed Muhammed Abbu Bakker,*** reported in ***AIR 1976 Madras 84***).

11.19 The Apex Court in the case of ***Mansoor Saheb (Dead) & Ors. v. Salima (D) By Lrs. & Ors.***, reported in ***2024 SCC OnLine SC 3809*** in regards to concept of joint or undivided family, coparcener, etc. among Muslim, in para 14, 15, 17 and 18 held as under:-

> *"14. Tahir Mahmood, in his book 'The Muslim Law of India', 2nd Edition, Chapter 12 (Law of Inheritance) Para II, has provided for various concepts related to succession in Muslim Law which distinguish it from other personal laws:*
>
> *'1. The Muslim law of succession is basically different from the parallel indigenous systems of India. The doctrine of janmswatvavada (right by birth), which constitutes the foundation of the Mitakshara law of succession, is wholly*

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

unknown to Muslim law. The law of inheritance in Islam is relatively close to the classical Dayabhaga law, though it differs also form that on several fundamental points. The modern Hindu law of succession (as laid down in the Hindu Succession Act, 1956) is, however, much different from both the aforesaid classical systems; it has a remarkable proximity, in certain respects, to the Muslim law of inheritance.

2. The division of heritage (daya) into sapratibandh ('obstructed') and apratibandh ('unobstructed')-self-acquired and ancestral- is equally foreign to Muslim law. Whatever property one inherits (whether from his ancestors or from others) is, at Muslim law, one's absolute property whether that person is a man or a woman.

3. In Muslim law, so long as a person is alive he or she is the absolute owner of his or her property; nobody else (including a son) has any right, whatsoever, in it. It is only when the owner dies and never before that the legal rights of the heirs accrue. There is, therefore, no question of a would be heir dealing in any way with his future right to inherit.

4. The Indian legal concepts of 'joint' or 'undivided' family, 'coparcenary', karta, 'survivorship', and 'partition', etc., have no place in the law of Islam. A father and his son living together do not constitute a 'joint family'; the father is the master of his property; the son (even if a minor) of his, if he has any. The same is the position of brothers or others living together.

5. Unlike the classical Indian law, female sex is no bar to inherit property. No woman is excluded from inheritance only on the basis of sex. Women have, like men, right to inherit property independently, not merely to receive maintenance or hold property 'in lieu of maintenance'. Moreover, every woman who inherits some property is, like a man, its absolute owner; there is no concept of either stridhan or a woman's 'limited estate' reverting to others upon her death.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

6. The same scheme of succession applies whether the deceased was male or a female. This is one of those salient features of Muslim law of succession which distinguish it from modern Hindu law of inheritance.' (Emphasis supplied)

15. The position on devolution of property under Mohammedan Law has been succinctly captured in Chapter 22- Law of Succession and Inheritance of Mulla on Mohammedan Law 5th Edition in the following terms: "all properties devolve by succession, so the rights of heirs come into existence only on the death of the ancestor. The whole property vests in them." The Mohammedan Law has well-defined rules of inheritance that come into effect upon the death of the ancestor, and its policy has been to restrain the owner from interfering in such well-defined rules. Transfer of property if required to be made during the lifetime of a person, they may do so primarily by way of gift (hiba). Other methods include the writing of a will but even therein certain restrictions have been postulated.

16. Prior to looking to the above said sources, a general understanding of partition would also be instructive. Advanced Law Lexicon defined partition as a separation between joint owners or tenants in common of their respective interests in land, and setting apart such interest, so that they may enjoy and possess the same in severalty. In Shub Karan Bubna v. Sita Saran Bubna, partition was defined as under:

'5. "Partition" is a redistribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of lands or other properties jointly held by them into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty.

6. A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. "Separation of share" is a species of "partition". When all co-owners get separated, it is a partition. Separation of share(s)

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

refers to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only a separation of the share of one brother.' (Emphasis supplied)

17. Let us now turn to the position as it is under Mohammedan Law. The right of an heir-apparent comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor [See: Mulla Principles of Mahomedan Law, 22nd Edition, Chapter 6; Abdul Wahid Khan v. Mussumat Noran Bibi & Ors.]. Reference may also be made to the decision of this case in Gulam Abbas v. Haji Kayyum Ali & Ors. wherein a bench of three learned judges observed albeit in connection with renunciation of inheritance as under:

'7. Sir Roland Wilson, in his "Anglo Mohamadan Law" (p. 260, para 208) states the position thus:

'For the sake of those readers who are familiar with the joint ownership of father and son according to the most widely prevelant school of Hindu Law, it is perhaps desirable to state explicitly that in Mohammedan, as in Roman and English Law, emo est heres viventis.....a living person has no heir. An heir apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession; See Abdul Wdhid, L.P. 12 I.A., 91, and 11 Cal 597 (1885) which was followed in Hasan Ali, 11 All 456, (1889). The converse is also true: a renunciation by an exepectant heir in the lifetime of his ancestor is not valid, or enforceable against him after the vesting of the inheritance.'' (Emphasis supplied)

It is also important to note that the doctrine of partial partition does not apply to Mohammedan Law as the heirs therein are tenants-in-common. Succession is to a definite

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

fraction of the estate in question. A.N. Ray, J. as his Lordship then was wrote in Syed Shah Ghulam Ghouse Mohiuddin v. Syed Shah Ahmed Mohiuddin Kamisul Quadri, as follows:

'20. … In Mohammedan law the doctrine of partial partition is not applicable because the heirs are tenants-in-common and the heirs of the deceased Muslim succeed to the definite fraction of every part of his estate. The shares of heirs under Mohammedan law are definite and known before actual partition. Therefore on partition of properties belonging to a deceased Muslim there is division by metes and bounds in accordance with the specific share of each heir being already determined by the law.' "

11.20 Yet in another Judgment in the case of ***Ajambi (Dead) by Legal Representative v. Roshanbi and Ors.***, reported in (***2017) 11 SCC 544***, the Supreme Court observed that there is no concept of joint family in Mohemmadan Law.

12. In thus, the base of the suit claiming the relief of administration as well as the base of claiming the discretionary relief under Order XXXIX Rule 1 & 2 of 'the Code' read with Section 151 of 'the Code' mainly embedded in para 4 of the plaint, revolves around two concepts, *vis* the concept of **'joint family property'** and **'ancestral property'**. The para 3A of plaint, describes the immovable property of Lot-3A. According to para 4 of the plaint, these immovable properties were standing in name of the father or father has purchased in the name of the son during the lifetime from the earning of gains. Plaintiff, by this kind of the pleading implies that joint family was existing and father, in order to avoid the operation of the 'Tenancy Act' or

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

any other provision of law, purchased the various parcels of the lands in the name of the sons. These purchase are made to benefit of the family. The concepts pleaded by the plaintiff very much would be available to her, provided that she is governed by the provisions of the Hindu Law, but here is case where a Muslim female claim and contends concept of joint family property, which is wholly not available to her.

13. As discussed hereinabove, the parties are governed by the Principle of Mohammedan Law and concept of 'joint family' and the property purchased out of the nucleus of joint family or from the purse maintained by the joint family is totally unavailable, rather is foreign to the Mohammedan Law.

14. The concept of ancestral property, which has a link and base to the Principle of Right by Birth. The Principle is rooted to form any immovable property as coparcenary property, again is foreign to the application of the Mohammedan Law.

15. At the cost of repetition, it can be said that the Mohammedan Law recognise that no living person has a heir, the chance of heir to succeed the inheritance is based on succession or chance of heir apparent. Mohammedan Law since does not recognize concept like **joint family property** or **ancestral property**, the very foundation of the plaint as well as injunction application duly debased and invalidate the plaintiff's case.

16. Mark-4/224, i.e. the family arrangement was taken into consideration by both the contesting parties. Thus, question

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

arised that, whether the term 'family settlement' is applicable to the litigants, who are governed by the Mohammedan Law.

17. Though the concept of family settlement amongst Mohammedan Law is not quite common, there are instances agreement in nature of family arrangement are made, which may not strictly act as family settlement. Such family settlement, if proved, is binding amongst the Mohammedan Law in same manner as such arrangement would bind Hindus. Such arrangement among the Muslim families is recognised as a 'family settlement'.

18. The Hon'ble Apex Court in the case of ***Naseem Kahnam and Ors. v. Zaheda Begum (Dead) by Lr. and Ors.***, reported in ***2024 INSC 492*** held that, in Muslims, a family settlement agreed is legally valid if made voluntarily and intended to amicably resolve the property disputes amongst the family members.

19. In case of ***Mohd. Amin and Ors. v. Vakil Ahmed and Ors.***, reported in ***AIR 1952 SC 358***, the Supreme Court recognized the application of the Principle governing family settlement to the Muslim. In this case, it was a question about the validity of the transfer of interest in the property of minor by the defective guardian, the Apex Court held that such transfer is void. Yet, it recognized the application of the family settlement.

20. The various parcels of the land stated in Lot-3A is subject matter of the family settlement *inter-se* between the parties. It took place during the lifetime of deceased

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

Valimohammad Kaduji, between father and the four brothers recognizing the rights of each brothers in regards to the various parcels of land. Also recognized the rights of the plaintiff as well as defendant No.5 with the conditions ascribed that whenever the sale of any land took place, minimum Rs.30,000/- to be given to the sisters by each of the four brothers jointly. The family settlement is acted upon between the parties. It discerns from the Revenue Entry No.1606 (Mark-4/184). Issuance of the notice to the plaintiff (Mark-55/18) and Mutation Entry No.2318 (Mark-4/42). The plaintiff as well as defendant No.5 and widow - Ayeshabibi Valimohammad have, by giving a statement to the Revenue Officers, consented in posting the revenue entry. Thus, it was within the complete knowledge of the plaintiff that the revenue entries were posted in the name of the four brothers i.e. defendant Nos.1 to 4, pursuant to family settlement. Plaintiff's agreement to family settlement can be inferred, as revenue entries were not challenged.

21. In view of above, while dealing rival case of the pary at the stage of deciding injunction application, it is to be noticed that the purpose of the family settlement is normally to ally the dispute existing or apprehended in family and it is in interest of harmony in the family or the preservation of the property. However, it is not always necessary that there should be existence of dispute or possibility of dispute in future to execute the family settlement. It would be sufficient if it is acted to keep the family in harmony. In the present case, in family settlement all six heirs of deceased - Valimohammad Kaduji and deceased - Ayeshabibi Valimohammad got their respective shares, whereby

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

daughters got it by way of money and sons got it by way of various parcels of the land. This family settlement was put on record, prima-facie found to be acted upon as it is basis for Mutation Entry No.1604 and 2318. Plaintiff and her sister – defendant No.5 gave statement to relinquish their right from the various parcel of lands. Apt to note that, this family settlement has not been assailed or countered by the plaintiff.

22. The aforesaid discussion brings us to say that, whether the 'Principle of Acquiescence' is applied or not. Admittedly, deceased - Valimohammad Kaduji had expired on 10.08.1984. In his lifetime, on 25.04.1983, a family settlement (Mark-4/224) was executed. Revenue Entry No.1606 was posted on 15.09.1984. Another Mutation Entry No.2318 was posted on 19.01.1985. Mother Ayeshabibi Valimohammad expired in 1995 and the sale of various parcels of the land started from 1999 to 2005 and later on, plaintiff lives in Vadodara, within the same vicinity where defendant Nos.1 to 4 are living. They are real brothers and sister. It is not the case of the plaintiff that there is no good relationship with her brothers. Rather, besides they are siblings, they are in-laws of each other's son and daughters and have the occasion to each other's residential life.

23. In the aforesaid circumstances, filing of the suit on the ground that defendant Nos.1 to 4 were assuring the plaintiff to give share from the immovable property in Akota or Tandalja is nothing but a clever pleading to get away from the Principle of Acquiescence. The plaintiff's claim of seeking administration of the estate of deceased father is actually barred by Principle of Acquiescence.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

24. Another noticeable aspect coming forth that, plaintiff since found that third party interest is created by sale of several parcels of the land and hence, it would not be possible for the Court to pass the interim orders against the various parcels of the land, as construction and development are made in the subject matter of the suit as well as third party interest are created thereof, came out with the novel idea to file affidavit at Exhibit-79, without amending the relief claimed in the injunction application, asked the Court to grant the relief only upon the properties stated in Exhibit-79 as to gain injunction on the unsold and open land, which belongs to defendant Nos.1 to 4 or defendant Nos.11 and 12. Surprisingly, the interim order passed by the learned trial Court is just a replica of what is stated by the plaintiff in Exhibit-79. This is somewhat unusual and atypical. It is settled principle that the Court cannot grant relief what is not claimed by the party. Thus, grant of interim-relief by learned trial Court based on Exhibit-79 affidavit is perverse approach and is in violation of settled law.

25. In a nutshell, the impugned order found to be bad in law, perverse and against the settled principle of law.

26. A worthy reference can be taken from the judgment of ***Ramakant Ambalal Choksi (Supra)***, whereby the Supreme Court defined the term 'perverse', by taking assistance from various law dictionaries. The relevant para 34 and 35 reads as under:-

> *"34. Any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough reported in*

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

***(1878) 1 LR 1r 331**, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey, reported in **106 NW 814**, the Court defined "perverse" as "turned the wrong way"; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.*

35. The expression "perverse" has been defined by various dictionaries in the following manner:

a. Oxford Advanced Learner's Dictionary of Current English, 6th Ed.

Perverse - Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

b. Longman Dictionary of Contemporary English - International Edition

Perverse - Deliberately departing from what is normal and reasonable.

c. The New Oxford Dictionary of English - 1998 Edition

Perverse - Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

d. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition)

Perverse - Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

e. Stroud's Judicial Dictionary of Words & Phrases, 4th Ed.

Perverse - A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."

27. In the light of the aforesaid definition of 'perversity', it is found that learned trial Court while granting the injunction in favor of the plaintiff, had failed to apply the mind that parties to

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

the dispute are governed by the Principles of Mohammedan Law, where concept of 'joint family property' or 'ancestral property' are totally alien, and thus, when it is established on record that the learned trial Court has failed to refer the provisions of the law governing the succession of the parties being Muslim, and reached to a particular conclusion to grant interim-relief, is to be defined as a conclusion arrived at by the wrong way or distorted from the rightious and logical conclusion. Family settlement on record having not been challenged by plaintiff, has also been ignored by the learned trial Court.

28. The grant or refusal of the injunction is governed by the three cardinal principles, i.e. prima-facie case, balance of convenience and irreparable loss. In a consideration of grant of injunction, all three principles are required to be established.

29. The Supreme Court in case of ***Kalgonda Babgonda Patil v. Balgonda Kalgonda Patil***, reported in ***AIR 1989 SC 1042,*** held that, existence of three cardinal principles, i.e. prima-facie case, balance of convenience and irreparable loss is *Sine qua non* to grant the injunction.

30. In view of above, according to this Court, the learned Court below has committed serious error; the impugned order passed by the learned trial Court is against the settled principles of law. The learned trial Court did not apply the Principles of Mohemmadan law to the inter-se dispute between the parties and ignorance of the application of such provision of law makes the impugned order incorrect and perverse, and permits this Court to interfere.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

31. In identical fact situation in a case, which is governed by the Hindu Law, where sister asked for share in the joint family property, where third party interest was created, the coordinate Bench of this Court in ***A.O. No. 507 of 2012*** in case of ***Pramukhkrupa Enterprise Through Managing Partners & Anr. v. Kunverben Chaturdas Patel Through POA Mahendrabhai C. Patel & Ors.***, having referred to the authoritative pronouncement on the subject matter held that, if at all the sister established her share, it is so negligent to grant the stay, as sister can be compensated in terms of money.'

32. In the present case, the family arrangement (Mark-4/224) states that on the sale of each parcel of land, plaintiff and her sister defendant No.5 are entitled to get minimum Rs.30,000/- jointly from all four brothers. In addition thereto, plaintiff claimed compensation of Rs.50 Crores in the suit. Thus, two aspects are suffice to say that even if plaintiff has prima-facie case, she failed to prove the two other cardinal principles i.e. balance of convenience and irreparable loss, in her favor as third party interest is already created in knowledge of the plaintiff and secondly, her right, if any, can be compensated in terms of money.

33. In light of aforesaid reasons, it is held that help of the three golden rule of grant of injunction, i.e. prima-facie case, balance of convenience and irreparable loss, fails to stand in favor of the plaintiff.

34. In the aforesaid premises, the authoritative pronouncements relied upon by the learned Counsel for the original plaintiff will not render any assistance.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

35. In view of above, the Appeal from Orders deserve consideration.

36. Ex-consequenti:-

I.) The Civil Revision Applications No.48 of 2023 and 49 of 2023 are hereby rejected.

II.) The Appeal from Order Nos.41 of 2024, 42 of 2024 and 43 of 2024 are hereby allowed.

III.) Impugned order passed below Exhibit-5 by the learned trial Court dated 02.02.2024 is hereby quashed and set aside and consequently, application Exhibit-5 stands dismissed.

IV.) Needless to state that the observations made hereinabove are tentative to decide the CRAs and AOs. These observation shall not influence the final outcome of the suit.

37 Registry is hereby directed to maintain the copy of this order in each of the matters.

All connected Civil applications do not survive. Record and Proceedings, if any, to be sent back to the concerned Court forthwith.

Sd/-
(J.C. DOSHI, J.)

After pronouncement of the judgment, learned advocate Mr. Jamshed Kavina, requested to stay the order passed in the Appeal from Orders for 06 weeks.

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026

NEUTRAL CITATION
2026:GUJHC:10564

Senior Advocate Mr. Mihir Joshi highly objected to the grant of the interim-relief.

Considering the facts and circumstances, the interim-relief, if any granted earlier in the AOs, to continue to operate for a period of 03 weeks from today.

Sd/-
(J.C. DOSHI, J.)

Raj

Uploaded by () on Downloaded on : Sat Feb 14 18:53:26 IST 2026