

**Non-reportable**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**Civil Appeal No.....OF 2022**

**(Arising out of Special Leave Petition (Civil) No.16483 of 2022)**

**HARISH ISHWARBHAI PATEL**

**...APPELLANT(S)**

**VERSUS**

**JATIN ISHWARBHAI PATEL & ORS.**

**...RESPONDENT(S)**

**J U D G M E N T**

**VIKRAM NATH, J.**

1. Leave granted.
2. With the consent of the learned counsel for the parties, the matter has been heard finally at the stage of admission itself considering the nature of controversy and the stage of the pending suit.
3. Plaintiff has filed this appeal assailing the correctness of the order dated 30.06.2022 passed by the High Court of Gujarat in R/Appeal From Order No. 70 of 2022, whereby it allowed the appeal and set aside the order dated 15.02.2022 passed by the 6<sup>th</sup> Additional Senior Civil Judge, Ahmedabad (Rural), Mirzapur in Special Civil Suit No.256 of 2021, whereby it allowed the

application (Exh.-5) for temporary injunction and directed the defendants to maintain status quo with respect to the property mentioned in the Will in question till final disposal of the suit and, further that the defendants would furnish the details and account of the movable property of the deceased-Ishwarbhai Madhavbhai Patel from the date of his death within 30 days from the date of the order.

4. The appellant, respondent no.1 and respondent no.2 are the two sons and daughter of Ishwarbhai Madhavbhai Patel. Respondent no.3 is the widow of Ishwarbhai Madhavbhai Patel. The dispute relates to a registered Will dated 28.05.2018 said to be executed by late Ishwarbhai Madhavbhai Patel in respect of his several immovable properties. Under the said Will, appellant & respondent no.3 were excluded and the beneficiaries were respondent nos.1 & 2. The appellant is the elder son, whereas respondent no.1 is the younger son of late Ishwarbhai Madhavbhai Patel.

5. Ishwarbhai Madhavbhai Patel served in the Armed Forces from 1961 till his retirement in 1976. He was granted open land admeasuring 20234 sq. mts. as per new tenure restrictive

convenants at Village Bhadaj, Ghatlodia, Ahmedabad in 1979. In 1990, Ishwarbhai Madhavbhai Patel is said to have started a family business (a security services) by the name and style of "Protection and Security Services". Respondent no.3 was the proprietor of such business. The appellant also joined the said business of his father in 1990 itself when he was aged about 19 years. He was given the job of site visits and also Human Resource Administration in the business. In 1994, a partnership was created with Ishwarbhai Madhavbhai Patel and his wife respondent no.3 as partners. The appellant continued with his responsibilities as entrusted to him in 1990.

6. On 01.04.1996, the appellant was made a partner in the aforesaid firm along with Ishwarbhai Madhavbhai Patel and his wife. The profit loss sharing ratio *inter se* Ishwarbhai Madhavbhai Patel, his wife and appellant was 40:40:20 respectively.

7. Later on, respondent no.1 was also inducted as a partner and their resultant ratio of profit loss sharing was 30:30:20:20. In the meantime, the security services continued and from the profits and proceeds of the said business, certain properties were also acquired. The security business suffered some setbacks in

January, 2005, due to a search conducted by the Department of Central Excise, as a result of the same, respondent no.1 not willing to bear the burden against the security firm retired as a partner vide deed dated 01.04.2006. The appellant continued to bear the responsibility of running the security firm and single handedly looked after and managed the business. In July, 2007, the appellant started his own Security Services by the name and style of 'Global Services'. Ishwarbhai Madhavbhai Patel breathed his last on 17.01.2021 after brief complication post Covid. It was at this stage that the Will dated 28.05.2018 came into light, according to which, the appellant and respondent no.3 were excluded from the Will and it was only the respondent no.1 and respondent no.2 who were the beneficiaries of the immovable assets claimed by Ishwarbhai Madhavbhai Patel to be self acquired.

8. The appellant tried to claim his 1/4<sup>th</sup> share in the properties of his father but the same was denied despite request which compelled him to institute a suit for declaration, partition and other reliefs as set out in paragraph 53 of the plaint. The same is reproduced below:-

*"53. The plaintiff therefore prays as under:*

*a. The Hon'ble Court be pleased to pass a decree setting aside the Will dated 28.05.2018 executed by Ishwarbhai Madhavlal Patel bearing registration no. 5128 and registered with the office of the Sub-Registrar of Ahmedabad-3 (Memnagar) as the same is illegal, null and void, non-est and/or as the same is the result of undue influence exercised by Defendant Nos.1 and 2 and consequently, Defendant Nos. 1 and 2 and persons claiming through them are not entitled to receive and bequest/disposition under such purported will.*

*b. The Hon'ble Court be pleased to declare that the plaintiff and the defendants each have 25% undivided share in the assets of Ishwarbhai more particularly described in Schedule-A and Schedule-B as annexed to the plaint.*

*c. The Hon'ble Court be pleased to pass a decree for partition of all the assets of Ishwarbhai Madhavlal Patel by metes and bounds more particularly described in Schedule-A as annexed to the plaint and be further pleased to separate out the share of the plaintiff and handover the same to him for his own benefit, use and enjoyment and in the alternative if the defendants fail to co-operate, the Hon'ble Court be pleased to appoint a Court Commissioner for partition of all the assets of Ishwarbhai Madhavlal Patel more particularly described in Schedule- A as annexed to the plaint by metes and bounds and be further pleased to separate out the share of the*

*plaintiff and handover the same to him for his own benefit, use and enjoyment.*

*d. The Hon'ble Court be pleased to direct the defendants to disclose the inventory and accounts of all the movable assets left behind by deceased Ishwarbhai Madhavlal Patel on the date of his death and be further pleased issue direction to the defendants to handover and/or pay 25% share of all such assets as on the date of the death of Ishwarbhai Madhavalal Patel to the plaintiff.*

*e. The Hon'ble Court be pleased to declare that the defendants are not entitled to deal with, alienate, transfer, mortgage, part with possession or create any third party right, title or interest in the assets of Ishwarbhia Madhavlal Patel as mentioned in Schedule-A and Schedule-B as annexed to the plaint.*

*f. The Hon'ble Court be pleased to grant a permanent injunction restraining the defendants, their servants, agents, assignees, workers or any other third party claiming through or under the defendants from dealing with, alienating, transferring, mortgaging, part with possession on from creating any third party right, title or interest in the assets of Ishwarbhai Madhavlal Patel as mentioned in Schedule-A and Schedule-B as annexed to the plaint in any manner whatsoever.*

*g. Such other and further reliefs as may be deemed fit and appropriate in the facts and circumstance of the case may be granted in favour of the plaintiff.*

*h. Costs of the suit be awarded in favour of the plaintiff."*

9. The appellant along with the plaint also filed an application for ad-interim injunction under Order 39 Rules 1 & 2 C.P.C. (Exh.-5) as there was serious apprehension that respondents would alienate the immovable properties covered under the Will.

10. A perusal of the plaint reflects two major grounds for assailing the Will dated 28.05.2018. Firstly, that it was executed under suspicious circumstances and, secondly, that Ishwarbhai Madhavbhai Patel did not have the right to execute Will of the immovable properties which were acquired from the profits and proceeds of the partnership of which the appellant was a partner as the said properties would be owned by the partnership firm and not by Ishwarbhai Madhavbhai Patel exclusively. The defendants jointly filed one written statement denying the plaint allegations. Affidavit in rejoinder was filed by the appellant in response to the written statement.

11. The trial court vide order dated 15.02.2022 allowed the application for temporary injunction (Exh.-5). The defendants were directed to maintain status quo of the property mentioned in the Will dated 28.05.2018. The order further required the

defendants to furnish the list and account of the movable properties of the deceased Ishwarbhai Madhavbhai Patel as on the date of his death, within 30 days from the date of the order. In passing the said order, the trial court recorded specific findings on the three ingredients for grant of temporary injunction i.e. prima facie case, balance of convenience and irreparable loss.

12. The respondent nos.1, 2 and 3 preferred an appeal under Order 43 Rule 1(r) C.P.C. registered as Appeal From Order No.70 of 2022 in the High Court of Gujarat. The said appeal has been allowed by the High Court vide impugned judgment dated 30.06.2022.

13. The High Court while allowing the appeal has further issued direction that the trial court shall decide the suit in accordance with law on the basis of the evidence led by both the parties without being influenced by any of the observations made in the said order. It further issued direction to expedite the hearing of the suit and see to it that the suit is disposed of as early as possible preferably within six months from the date of receipt of its order.



14. It has been stated at the bar that the suit is at the stage of framing of issues. Learned counsel for the parties have also given an assurance that the parties would co-operate in the early disposal of the suit.

15. We had also required the parties to give proposal so as to meet the ends of justice and protect the interest of the appellant. However, that effort has failed as the proposal given by the respondents is not acceptable to the appellant. Respondents are willing to not give an undertaking that they will not alienate the properties during the pendency of the suit but have only offered that some of the properties would not be alienated, which offer is not accepted by the appellant.

16. Having heard learned counsel for the parties and having perused the material on record, we are of the view that the order of status quo passed by the trial court was justified in the facts and circumstances of the case. We are not entering into the merits of the matter as it may influence the trial court. We, therefore, allow this appeal, set aside the impugned order of the High Court dated 30.06.2022 maintaining the order of the trial court in order to advance justice between the parties.

17. We, however, endorse the directions of the High Court that the suit itself be decided on merits preferably within a period of six months.

18. Pending applications, if any, stand disposed of.

.....**J.**

**[ANIRUDDHA BOSE]**

.....**J.**

**[VIKRAM NATH]**

**NEW DELHI**

**OCTOBER 21, 2022.**