

ORDER UNDER EXH. 5 IN REGULAR CIVIL SUIT NO. 62 OF 2012

1. The Plaintiff has filed the present suit for the declaration and the permanent injunction and the Plaintiff has also preferred this application for the temporary injunction and seeking prayer that the Defendant be restrained by the temporary injunction neither to take the possession nor to transfer the suit property to anyone by any mean.
2. The Defendants are served upon the notices / summons and appeared through their Ld. Advocate. The Defendant No.3 & 4 neither appear before the Court nor filed any reply. Whereas Defendant No. 1, 2, 5, 6 & 7 have filed the written statements vide Exh.21 wherein they have contended that the statements and averments made in that Exh.1 are not true and correct. They have further stated that the Defendants' ancestral has not sold the suit property to the Plaintiff. So, this application must be dismissed.
3. I have perused pleadings, documents, citations on the record. Under these circumstances, the following points have been arisen for the determination of the application:
 - 1) Whether the Plaintiff entitled to get interim relief as claimed ?
 - 2) What Order ?

4. I have gone through the pleadings, affidavit, citations and the finding of the above points are as under with the reason thereof :

- 1) Negative.
- 2) As per final Order.

REASONS

Issue No.1:

5. Plaintiff has filed this suit application under Order 39 Rule 1 & 2 for the interim injunction and therefore, it is for the Plaintiff to establish governing principle like prima-facie case, balance of convenience and if the relief is refused then irreparable injury will be caused to the Plaintiff which cannot be compensated in terms of money by an affidavit and documentary evidences. The Plaintiff has declared on the affidavit that the Plaintiff's ancestral has purchased the suit property which is old tenure land from the Defendant's ancestral by an oral agreement and the Plaintiff's ancestral has paid full consideration to the Defendant's ancestral. The Plaintiff further argued that they are doing the cultivation over the suit property from the last 50 years back and they have independent possession of the suit property. They further said that their name is also in the Revenue Record i.e. in 8A and as per the Commission Report also, the possession is going with the Plaintiff only. They further stated that the Plaintiff is the owner of the suit property by way of adverse possession too then also the Defendant is trying to take over the suit property

from them with the help of other persons. The Plaintiff further argued that as per the documentary list vide Exh.3, in extract 7/12 by Revenue Record, the name of the Plaintiff's grandfather is on record as the name of that person only get entered who do cultivation otherwise name doesn't get entered. The Plaintiff said that the Defendant had a knowledge of above mentioned thing at that time then also doesn't done anything but now they came and doing all this when the prices of land get rises. The Plaintiff further said that they have applied to get their name entered in "Panipatra" to Talati-Cum-Mantri Shri but till date nothing has been done as the Defendant is influential and wealthy person. The Plaintiff argued that they are an independent possession holder of the suit property so their possession must be protected. For that, the Plaintiff has submitted the following Citations:

- 1) 1994(1) GLH 470.
- 2) 1995(2) GLC 1369.
- 3) AIR 1980 Kerala 224(1).
- 4) AIR 1982.

Further, the Plaintiff stated that he is in the independent possession of the suit property since last 10 years but as the agreement done orally so that time no documentation was done, that is why the name of the Plaintiff's ancestral doesn't get entered in the Revenue Record. So, the name of the Defendant is still running. The Plaintiff further stated that the Defendant has the full knowledge of Sale.

6. Whereas the Defendants said that the suit property is never sold to the Plaintiff by the Defendants' ancestor. If such thing is done then the Plaintiff must produce evidence regarding that but the Plaintiff has not submitted any evidence which can support his words. The Defendants argued that at one hand, the Plaintiff says that he purchased the suit property on paying full consideration and on the other hand, says that as the Plaintiff is doing cultivation on the suit property so that he has adverse possession over the suit property. So, the both things create controversy. The Defendants further said that by Commission Report it does not prove that the Plaintiff is in the possession as the Plaintiff has done all this to make evidence. So, Section 6 & 37 of Specific Relief Act does not apply here. The Defendants further stated that by mistake the name of the Plaintiff's ancestor i.e Ishwarbhai Desaibhai get entered in Revenue Records thereafter, by order of the Deputy Collector, Revenue Entry No.4287 on dated 28/01/1962 get deleted which is conclusive proof. Further, the Plaintiff's ancestor neither filed any appeal nor revision. So, the injunction application is not maintainable.
7. On going through the record documents, facts and circumstances of the case, it do not seems that the Plaintiff is in the possession of the suit property as by putting the board in name of any person do not means that the named person is possessor. Further, the Plaintiff is not able to produce a single evidence on records to show that he is the owner of the suit

property. Moreover, the Plaintiff said that his name is in "Panipatra" but when the name get removed then also it is not shown that what he has done till now or in which stage the case proceeding is pending. Though it is said by the Defendant that the Plaintiff has no right over the suit property. So, whether the Plaintiff has a right over the suit property or not, is all the matter of evidence. So, it cannot be decided without recording the evidence, otherwise, multiplicity of proceeding will arise and decided only on the merit of the suit. Hence, in the given circumstance, the balance of convenience is not likely to be in the favour of the Plaintiff. Hence, Issue No.1 is decided accordingly in negative and the interest of the justice, I pass the following Order.

-: O R D E R :-

- (1) The present application vide Exh.5 is hereby rejected.
- (2) No Order as to the costs.

Signed & Pronounced in the open court on this 5th day of February, 2015.

Place: Ahmedabad

Date: 05/02/2015

(Jyoti Choudhary)

UIC: GJ01179

**2nd Addl. Civil Judge & JMFC
Ahmedabad(Rural), Mirzapur,
Ahmedabad.**