

Order Below Exh.5 & 46
in
Regular Civil Suit No.404/2011

1. The present suit has been filed by the plaintiff for declaration and permanent injunction and claiming their share from the suit property as 1/3 by metes and bound and further challenging their family distribution of property and they have press the interim injunction application and during pendency of hearing on that interim injunction application, they had filed amendment injunction application vide Ex.46 and prayed interim injunction against defendants no. 1 to 3 and prayer for restring them to do any construction work on the suit property.

These both application are interconnected with the facts and controversial aspect of this Lis , hence for the sake of brevity, its here by determine combinely for avoiding repetition accordingly.. The plaintiff had filed documents, in their support which, contain from mark 3/1 to 3/24. The present defendant no.1 to 4 had submitted their written reply vide Exh.16 and other defendants have not filed any reply or present for arguments and hence their right was closed for their default.

2. Ld. Advocate for the plaintiff had submitted before this court their argument would be considered as per their present both these applications and as per their documents and contended that they should be protected through interim injunction against any act of defendant no.1 to 4, which cause or change or alter the nature of their suit properties.

3. Hence if we perused these both applications, plaintiff had claimed that the suit

properties are their ancestral properties and there were no equal distribution or partition for the suit properties and hence they have less shares and the land which they get is not equal as per the defendants sides and defendants are now trying to construct the school building upon the suit properties, which are against the so called partition and hence they required to be protection by this court and injunction against the defendants from their any an act or action which alter the nature of suit properties.

4. The defendants no.1 to 4, Ld Advocate argued orally before this court and contended that from the last more than 65 years, there were a family partition for the suit properties by metes and bounds and as per that mutual understanding and agreement and family settlements arrived between the parties and now as per that settlement, all the parties are at presently occupied the suit properties and hence as per their written arguments vide Ex. 67 , they contended that, there were no any equitable circumstances or facts are in favour of plaintiff, and hence, they pray for the rejection of the present application.

5. Upon careful consideration on the canon and principle of the Higher Court, its settled that injunction is equitable remedy and for that and for passing an Order under 39 Rule 1-2 , for grant or refusal of temporary injunction is covered by three well established principles namely, (1) prima facie case; (2) balance of convenience and (3) irreparable loss, which cannot be compensated in terms of money. And the first and foremost condition is sine qua non for plaintiff to prove the three conditions conjointly and it is also settled that mere existence of one of three of these conditions does not entitle the plaintiff to get order in their favour in injunction application. The

plaintiff has to show *prima facie* that in the event of his success in the application and establishing his alleged legal right, he will not have a proper remedy, in which for compensation or damages are not sufficient and also the plaintiff must show the clear necessity for immediate protection, for his Legal right or interest which should otherwise lead seriously injured or impaired, and not last but the least, the Court has to take into consideration the comparative mischief or inconvenience to the parties and where there is a chance of irreparable loss / injustice, if injunction is not granted.

Unless and until all above conditions and ingredients which are illustrative but not exhaustive are establish injunction should not be granted. Keeping in mind of above cannon of law and well established principle and nature of discretionary relief, which has to be exercised judiciously within the framework of law of equity.

The principle enunciated by the Apex and Higher Court are taken into consideration and that principle held by the Superior Court, are taken into the adverting facts and circumstances of the present Lis and on principle of CPC 39 Rule 1 & 2 is very clear that the three ingredients which are *sine qua non* i.e. *prima facie* case, balance of convenience and irreparable loss are only prime consideration while deciding the interim injunction application and hence, the present facts and circumstances are taken for deciding the applicability of that principle.

6. So now merits and adverting the submission of the parties accordingly, following these issues arisen for my consideration:

1. Whether the plaintiff prove *prima facie* case?
2. Whether the balance of convenience is in favor of the plaintiff?
3. Whether the loss suffered by the plaintiff is irreparable

loss?

4. What Order?

7. For the above determination of issues, my reasons are as under:

1. In negative.
2. In negative.
3. In negative.
4. As per final order.

::: REASONS :::

8.

Looking to the main contention of the plaintiff, they challenged their family partition and contended that it was not accordingly and their were injustice to them and cause immense loss to them. Further they were challenged the revenue entry no. 615 of dated 7/11/2004, which certified after the following due procedure and were all the legal heirs of deceased Gopalbhai's , name was inserted as per their family settlements and agreement .

Hence looking to this contention, if we perused the documents of plaintiff's side vide mark 3/18 to 3/22, which are village form no. 6, were the revenue authority had followed all procedure and its vividly reflect that under section 135 (d),i.e. notice under the BLRC has been served upon the each and every heirs of deceased Gopalbahi and there were their statements was recorded by that authority and were the distribution agreement was also presented by the parties with the panchqyas for the suit properties and then Family Settlements was arrived between parties in regard with suit properties and with that revenue entry no.615 on dated 15-1-05 certified

accordingly.

Further plaintiff is not able to produced at this juncture any documents which shown, that there were any fraud or manipulation of record in regard with their family partition . Further as per the defendant no.1 to 4 contention, the suit property was ancestral property and there were other family members names are also running on revenue record,and even Plaintiff's father during his life span , had never taken an objection in regard with their family settlements or partition for the suit properties.

Hence, when the present plaintiff who is challenging defendant no.1 to 4 right, title and interest and pray for the relief in regard with the injunction to restrain the defendant no.1 to 3 from taking any action in regard with the suit properties which is not permissible at this stage, because one family member can not restrain the other family members from enjoyment of the their ancestral properties.

Hence plaintiff is miserably failed for the discretionary relief under CPC 39 Rule 1 & 2 which are prima facie case, balance of convenience and irreparable loss are totally absent from the plaintiff's side and hence, for absence of sufficient reasonable facts and circumstances in favour of the plaintiff, it is not just and desirable to grant equitable relief in favour of the plaintiff and hence, relying upon the peculiar facts and circumstances of this Lis, I inclined to pass the following order in the interest of justice:

::: ORDER :::

1. These both applications vide Exh.5 & 46 are hereby rejected.

2. The cost follow the final outcome of the suit.

The copy of this order put below Ex. 46.

Pronounced in open Court today on 30th June 2017.

Place: Surat

Date : 30-06 -2017

(Paraskumar Vinodray Bhatt)

14th Addl. Sr. Civil Judge & ACJM,
Civil Court, Surat
GJ00948

typed by self.