

Order below Ex-5

(1).. Read the application, perused the record and heard advocate of plaintiff and advocate of defendant. Plaintiff filed suit against defendant for declaration and permanent injunction and for ad-interim relief plaintiff filed this application. The brief facts of this application are that, plaintiff has been doing business in the name of J.K.Enterprises in Standard Mill compound, ward No.7, entry No.342, scheme No.1 having final plot No.23 with sub plot No.I (here in after referred to as suit property). The business which is doing by plaintiff is with the consent of defendant and for that the consent letter to Surat Municipal Corporation was given by defendant. Plaintiff has open land adjoining to the suit property and for doing construction work on that property there is provision of taking consent of all the land holders but defendant is not giving his consent and trying to take illegal benefit from plaintiff. Prima facie case is in favour of plaintiff and defendant is trying to take the possession of the suit property with the help of gundas and if possession of the suit property is taken forcible by defendant then this will cause loss to plaintiff and this loss cannot be compensated in terms of money. Balance of convenience is also in favour of plaintiff and plaintiff is doing the business in suit property with the consent of defendant. Therefore, defendant has no right to take the possession of the suit property from plaintiff without due process of law and requested the Court to allow this interim application and restrain the defendant from taking the possession of suit property forcibly by himself or through agent of through gundas and order defendant for not depriving plaintiff from suit property and not to create obstacle in the business of plaintiff till final disposal of the suit.

(2).. At exhibit 17 defendant filed written statement along with the reply to this ad interim application and denied the contentions of plaintiff's claim para wise and submitted that defendant is the owner of suit property and permission for doing business was given to plaintiff but ownership and

possessory rights are retained with defendant. By giving threat signatures of defendant were taken by plaintiff on different documents and no account of firm has been given to defendant. The possession of plaintiff in the suit property is not legal but only permissible and requested the Court to reject the application of plaintiff.

(3).. At Ex-3 list of documents was submitted by plaintiff and at Ex-21 counter affidavit was submitted by plaintiff. In this case for inspecting the suit property Court Commissioner was appointed and Court Commissioner conducted the Punchnama of suit property on 26-04-2014 and submitted the same in Court at mark-A. I have gone through all the documents submitted from the side of plaintiff and perused the counter affidavit and Panchnama.

(4).. Learned Council of plaintiff submitted oral arguments and in support of his arguments relying on the following citations:-

1. AIR 2011 Madras 266, Farhath v. Noorunissa Begum
2. AIR 2004 Supreme Court 4609, Rame Gowda (D) by L.Rs. v. M. Varadappa Naidu (D) by L.Rs. and another
3. 2014 AIJEL-HC 231766, Ravjibhai Bhavanbhai Ganodiya v. Nirmalaben Jagabhai Ganodiya.
4. 2012(3) GLR 2477, Bharat Petroleum Corporation Ltd. v. Talaja Nagarpalika
5. AIR 1993 Delhi 99, Shri. Hem Chand Jain v. Shri Anil Kumar and others.
6. AIR 1984 Allahabad 60, Bhola Nath and others v. Maharao Raja Saheb Bundi State, Rajasthan.

(5). Learned Council of defendant in support of his arguments relying on the citation of Hon'ble Supreme Court reported in 2012 (4) Civil LJ 494, Maria Margarida Sequeira Fernandes v. Erasmo Jack De Sequeira (dead), through L.Rs.

I have perused all the citations of Hon'ble Courts submitted from both sides with due regards.

(6).. In view of the above referred rival contentions and pleadings, following issues have been raised for determination of the present application.

1. Whether the plaintiff proves that there is a prima-facie case in his favour?
2. Whether the plaintiff proves that if temporary injunction is not granted, he shall suffer irreparable loss which cannot be compensated in terms of money?
3. Whether balance of convenience is in favour of plaintiff?
4. What order?

(7).. My answers on the above referred issues are as under:-

- (1) In negative.
- (2) In negative.
- (3) In negative.
- (4) As per final order.

Before discussing the factual aspects of the matter, certain legal provisions and settled law with regard to temporary injunction are required to be taken into consideration that temporary injunction can be granted if the case is covered by the three principles, namely, (1) on making out a prima facie case, (2) on showing balance of convenience in plaintiff's favour, in that the refusal of the injunction would cause greater inconvenience to him and (3) whether on refusal of the injunction he would suffer irreparable loss. Granting an injunction is a matter of discretion and in its exercise the Court has to satisfy itself whether the plaintiff has triable case. Before invoking the

jurisdiction of the Court to seek temporary injunction the plaintiff is bound to show that he has a legal right and that there was an invasion of his right.

Reasons of answers are as under:-

ISSUE NOs. 1 to 3

(8).. As the Issue Nos. 1 to 3 are interconnected, for the sake of convenience and brevity, I discuss all these three issues together. As per the facts of this case it is admitted fact that the suit property is in the name of defendant and as per the document submitted at Mark 3/6, it transpires that the suit property was purchased by defendant in year 2001 and subsequently sale deed was registered in year 2011 and it is also not disputed fact that on suit property plaintiff has been doing business in the name of J.K. Enterprises. it is also clear from the Commissioner's report (Panchnama) that in suit property, there are machinery and other equipments of plaintiff.

(9).. Learned council from the side of defendant submitted in his oral arguments that it is admitted fact that the defendant is the owner of suit property and plaintiff is doing the business in the suit property but signatures of defendant were taken by plaintiff without the consent of defendant and no account has been given to defendant. Plaintiff is elder brother of defendant so from this relationship he had taken many signatures on documents and after that he has been doing business in the suit property and taking illegal benefit of the same. The possession of plaintiff in the suit property is not legal but only permissible for which plaintiff is not paying any rent or profit to defendant. Plaintiff has also not shown any document which shows that there is any requirement of the signature of defendant for starting the construction work on adjoining land of plaintiff. As per the say of advocate of defendant that plaintiff had taken the signatures of defendant on different different documents and no account has been given to defendant but as per the facts of this case accounts was given or not is not the dispute which is to be resolved

by this Court but the main dispute between the parties is that the plaintiff is doing the business in the suit property and defendant is trying to take the possession of the suit property.

(10).. In this case defendant denied the contentions of plaintiff para wise but did not produced any document which shows that municipal taxes and electricity bills are deposited by defendant and when it is clear that on suit property plaintiff is doing business then without evidence to contrary it is obvious that taxes of the suit property and bills of consumed electricity are being deposited by plaintiff. As per the document submitted at Mark 3/3 it transpires that Plaintiff had taken Registration Certificate of Establishment from Surat Municipal Corporation in the name J.K.Enterprises in suit property with the consent of defendant. So, as per the facts of this case and documents on record, it appears that in suit property plaintiff has been doing business since 2003. Advocate of plaintiff mainly relies on the Judgment of Hon'ble Supreme Court reported in AIR 2004 Supreme Court 4609 Rame Gowda (Supra) and urged that when a person is in settled possession for long time then he can not be removed by force and also referred the citation of Hon'ble Gujarat High Court reported in 2014(0) AIJEL-HC-231766 and urged that defendant has no right to take the possession of suit property without due process of law.

(11).. On going through the facts of Rame Gowda (Supra), Plaintiff failed in proving his title but he was found to be in settled possession and even defendant failed in proving his title over the property and Hon'ble Supreme Court up held the order of injunction of trial Court and High Court and also observed that even a trespasser in a settled possession cannot be dispossessed without recourse of law. But as per the facts of this case title of the suit property is clear, i.e. of defendant and Hon'ble Supreme Court in Maria Margarida (Supra) held in para 27 that "According to law laid down by this Court in Rame Gowda (dead) by LR's. (supra), it is the settled legal position

that a possessory suit is good against the whole world except the rightful owner. It is not maintainable against the true owner." In this case plaintiff is demanding injunction against the true owner, therefore, findings of the Hon'ble Supreme Court in Rame Gowda (Supra) are not helpful to plaintiff.

(12).. The judgment cited by learned council of plaintiff of Hon'ble Gujarat High Court reported in 2012(3) GLR 2477 is regarding the property which was given on lease and Hon'ble High Court held that who is in a settled possession as mentioned herein before by virtue of the lease for all these years could not have been denied protection as possession has been done by both the Courts. But in this case, suit property was not given to plaintiff on lease and there is no rent or premium of suit property. Therefore, findings of the Hon'ble High Court of Gujarat in Bharat Petroleum (Supra) are not helpful to plaintiff.

(13).. In Maria Margarida (Supra), Hon'ble Supreme Court held in para 97 as under;

97. Principles of law which emerge in this case are crystallized as under:-

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.
2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.
3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.
4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

(14).. The other two case laws cited by advocate of plaintiff reported in AIR 1993 Delhi 99 and AIR 1984 Allahabad 60 are regarding rights of trespasser and lessee. So, facts of this case are totally different and with due regards these citations are not applicable to this case. As per the facts of this case and above discussion it is clear that there is no dispute regarding the title of the suit property and defendant is one and only owner of suit property. Plaintiff is doing business in the name of J.K.Enterprises whom he is proprietor. In this case no lease deed or rent agreement or license agreement was submitted by plaintiff and even though no such contention was raised by plaintiff. As per above discussion, the possession of plaintiff is peace full and settled and also for long time but plaintiff is neither the lessee nor the tenant nor licensee nor he is trespasser but he is allowed to retain the possession of the suit property by defendant gratuitously being elder brother of defendant. So, the possession of plaintiff in suit property is permissive in the eye of law and as per judgment of Hon'ble Supreme Court in Maria Margarida (Supra), plaintiff has not acquired any right or interest in the suit property and he is not entitled for protecting his possession against the true owner i.e. the defendant.

(15).. Plaintiff in his suit had not submitted any document which shows that consent of defendant is must for starting construction in his land which is adjoining to the suit property. Plaintiff is doing business of border lace on art silk yarn and if as per the say of plaintiff if defendant is not willing to give his consent for construction work in adjoining land of plaintiff then plaintiff may shift his business to some other area. But for this reason defendant can not be restrained for enjoying his possessory rights in suit property. As plaintiff is unable to prove his legal right and as per the judgment of Hon'ble Supreme Court in Maria Margarida (Supra), plaintiff is not entitled to protect

his possession so, prima facie case is not in favour of plaintiff. As Plaintiff is using the property of defendant and not paying any rent or profit to defendant and if this ad interim relief application is allowed than this will cause more in-convenience to defendant rather than plaintiff. Therefore, if this application is not allowed than this will not cause irreparable loss to plaintiff.

The answers of all the above three issues are in negative; therefore the following order is passed.

Order

- The ad-interim temporary injunction application preferred by plaintiff is hereby rejected.
- No order as to cost.
- Order passed in open Court today on 30-12-2017.

Place: Surat

Dated: 30-12-2017

Rajender Singh
(Judge Code- GJ01085)
2nd Add. Civil Judge, Surat