

GJVD010015172020



Received on : 19.02.2020
Registered on : 19.02.2020
Decided on : 05.08.2026
Duration : 06 05 17
Years Months Days

**IN THE COURT OF 9th ADDITIONAL DISTRICT
JUDGE AT VADODARA.**

Miscellaneous Civil Appeal No.12 of 2020

Exhibit:

Applicant (Original Defendant):

Dungarraj Hansraj Pavar,
Aged Adult, Occupation: Service,
Address: Brahman Faliyu, Rampura,
Navayard, Gorwa, Vadodara.

V E R S U S

Opponent (Original Plaintiff):

Prakashchandra Dipashankar Dave
Address: Sardar Nagar, Beside Essar Petrol
Pump, Old Chhani Road, Vadodara.

Appearance:

Shri K.G.Kukreja: Learned Advocate for the Applicant.
Shri J.Y.Pathak : Learned Advocate for the Opponent.

**APPEAL UNDER ORDER XLIII,
RULE 1(r) OF THE CODE OF
CIVIL PROCEDURE, 1908.**

-:: J U D G M E N T ::-

1. The applicant-original defendant has preferred this appeal under Section 104 read with Order XLIII, Rule 1(r) of the Code of Civil Procedure, 1908 (*for short “the Code”*) challenging order dated 27.01.2020 passed by the learned 4th Additional Civil Judge, Vadodara (*for short “the learned trial Court”*) below application Exhibit 5 in RCS No.442 of 2019 whereby the said application has been allowed and interim injunction in favour of the original plaintiff-opponent herein is granted.

The parties are referred to as per their original status in the suit for the sake of convenience and clarity.

2. Briefly stated, the case of the plaintiff, as averred in the plaint, is that the plaintiff was the owner and occupier of a residential property situated at Brahman Faliya, Rampura, Nava Yard, Gorwa, Vadodara, comprising City Survey Nos.5680 and 5681. It is the case of the plaintiff that in the year 2016 he reconstructed the property and thereafter agreed to sell a portion thereof to the defendant by a registered

sale deed dated 07.04.2016. According to the plaintiff, while executing the said sale deed, he had specifically excluded from the sale the western portion consisting of the room containing the Devsthan (Bhathuji Maharaj temple) and the adjoining room, as the said Devsthan had been in existence for several years and the plaintiff had been regularly performing worship therein. It is further averred that the registered sale deed itself specifically records that the aforesaid Devsthan room and the adjoining room were not included in the sale and that access thereto would remain from the western side. The grievance of the plaintiff is that when he was carrying out minor repair work to the roof of the Devsthan room, the defendant obstructed him, asserted ownership over the said portion, threatened to demolish the Devsthan and interfere with his possession and religious activities. On such allegations, the plaintiff instituted the suit seeking declaration of his rights in respect of the disputed portion of the property, consequential relief regarding the property records and permanent injunction.

- 2.1 Along with the suit plaint, the plaintiff has also produced list of documents at Exhibit 4 as well as application at Exhibit 5 for interim injunction.

3. Upon service of notice, defendant appeared and filed written statement-cum-reply to the suit as well as the application (Exh.5) at Exhibit 15 inter alia contending that the entire property, including the disputed Devsthan room and the adjoining room, had been agreed to be sold under the Banakhat and was subsequently conveyed by the registered sale deed; that the plaintiff had no subsisting right, title or possession over the disputed portion; that the defendant had been in possession of the entire property and was paying the municipal taxes and electricity charges; and that the plaintiff had never been using the disputed rooms for worship as alleged. The defendant, therefore, prayed for dismissal of the suit as well as rejection of the application for temporary injunction.
4. The learned trial Court has, after hearing the parties allowed the interim injunction application by the impugned order, which is under challenge in the present appeal.
5. After filing of the appeal, the original plaintiff filed reply-cum-objections against the appeal.
6. Heard the learned advocates.

7. The question that would arise for consideration is as to *whether the impugned order is just, legal and valid?* In other words, *whether the discretion exercised by the learned trial Court is perverse, arbitrary, capricious or against any settled principles of law?*
 - 7.1 Firstly, if the decision of Hon'ble Gujarat High Court in *Dhirubhai Bhavanbhai vs. Atulbhai Babubhai Raiyani, 2013(0) AIJEL-HC 229814* is read, it is held therein that it is well settled law that the appellate court is not required to go into merits of the entire matter and what is required to be seen is whether the plaintiff has made out a prima facie case or not for grant of interim injunction. It is well settled that the appellate court may not interfere with the exercise of discretion of the court at first instance and substitute its own discretion except when the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or when the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunction. So, the appellate court cannot reassess the material and reach a conclusion different from the one reached by the court.
8. At the outset, it may be stated that the application before the learned trial Court was under the

provisions of Order 39, Rule 1, 2 read with Section 151 of the Code and in order to exercise the discretion, the learned trial Court was required to consider three aspects, i.e. *prima facie case*, *balance of convenience* and *irreparable loss*.

9. Having examined the impugned order, the pleadings of the parties and the documents produced on record, it transpires that the principal controversy between the parties pertains to the western portion of City Survey No.5680 comprising the Devsthan (Bhathuji Maharaj temple) room and the adjoining room. While the plaintiff asserts that the said two rooms were specifically excluded from the registered sale deed dated 07.04.2016 and that he has continued to remain in possession thereof and perform religious activities therein, the defendant has disputed the said claim by contending that the entire property, including the disputed rooms, had been agreed to be sold under the Banakhat and was ultimately conveyed by the registered sale deed and that he alone has remained in possession of the entire property. Thus, the rival claims raise disputed questions of fact relating to the extent of the property conveyed under the sale deed, the nature of possession over the disputed portion and the rights claimed by the respective parties, which can

be finally adjudicated only upon appreciation of evidence during the trial.

10. It is well settled that while considering an application for temporary injunction, the Court is not expected to record any conclusive finding on the disputed questions of title or possession, nor is it required to finally adjudicate upon the rights of the parties. The enquiry at such interlocutory stage is confined to examining whether the plaintiff has been able to establish a prima facie case and whether the balance of convenience and irreparable injury justify preservation of the subject matter of the suit pending its final adjudication.
11. In the present case, the learned trial Court has taken into consideration the pleadings of both the parties as well as the documentary evidence produced on record. More particularly, the learned trial Court has referred to the registered sale deed dated 07.04.2016 (Regn. No.3368 of 2016), wherein there appears to be a recital to the effect that the Devsthan room and the adjoining room situated on the western side were not included in the sale and that the access thereto would remain from the western side. The learned trial Court has also taken note of the Panchkam produced on record indicating the existence of the Devsthan as

well as the affidavit produced by the plaintiff in support of his case. At the same time, the learned trial Court has also considered the Banakhat and other documents relied upon by the defendant before recording its satisfaction regarding the three essential ingredients for grant of temporary injunction.

12. Thus, it cannot be said that the learned trial Court has ignored the material placed before it or has exercised its discretion without considering the relevant factors. Whether the recital contained in the registered sale deed ultimately confers any enforceable right upon the plaintiff, whether the defendant's contention regarding the Banakhat is sustainable, and whether the plaintiff has continued in possession of the disputed rooms are all matters requiring evidence and are issues to be decided at the stage of trial. Any observation made by this appellate Court on those aspects would likely prejudice the case of either party at the final hearing of the suit.
13. In view of what has been discussed hereinabove, this Court comes to the conclusion that the original plaintiff has established all the three aspects in his favour. Thus, the learned trial Court has rightly observed that the said three ingredients do exist in favour of the plaintiff and granted the application for

interim injunction. In other words, the impugned order is just, legal and valid and no interference is required in the impugned order. Hence, the point raised above is answered in the affirmative. In other words, the discretion exercised by the learned trial Court is not perverse, arbitrary, capricious or contrary to the law.

14. In the premises, the following order is passed:

: ORDER :

1. The present appeal fails and is hereby dismissed.
2. Consequently, impugned order dated 27.01.2020 passed by the learned 4th Additional Civil Judge, Vadodara, in RCS No.442 of 2019 below application Exhibit 5 is hereby upheld and confirmed.
3. No order as to costs.
4. Records & Proceedings of the suit be remitted to the learned trial Court forthwith.

Pronounced today i.e. on 5th day of August, 2026.

Sd/-

Place: Vadodara

(D.K. SONI)

Date: 05.08.2026

**9th Additional District Judge,
Vadodara, (GJ-00729)**