

Order Below Exh.06 in H.R.P. Suit No.11 of 2019

Coram: Mr. Amit Harish Narang, Judge.

1) The plaintiff has filed this present application to get temporary injunction against the defendants.

2) The brief facts of the plaintiff's case are as under:-

The plaintiff has filed this suit as the Chairman and Sectary of the Gulbarg Co-operative Housing Society Limited and plaintiff's society is registered under Gujarat Cooperative Societies Act with the registration No.**G-686** dated 14/01/1963 and the suit property mentioned in para-2 of the plaint belongs to the society and the property narrated in para-2 with shop Nos.557/2/5 and 5577/2/6 was given to the defendant Nos.1 and 2 for their purpose business and the rent receipt for both the shops were issued separately as there were communal right in Ahmedabad in 2002 the records prior to that has been demolished so not available with the society on at the time of giving the shop there was agreed between the parties that defendant will not do any construction pertaining to the suit property which changes it shape and structure there was also an agreement made between the parties on revenue stamp of

Rs.100/- stating that rent of both the shops is Rs.200/- and the defendants have paid the rent till 31/03/2018 and after that the rent has not been paid by the defendant, but thereafter the defendant Nos.1 and 2 in their connivance has sublet the suit property to defendant No.3 by merging both the shops into one shop and by that they are receiving rent of Rs.500/-. The defendant Nos.1 and 2 are not doing their business in the suit property but the defendant No.3 is doing his business at the suit property and hence joined as plaintiff in the said suit. Therefore, the defendant Nos.1 and 2 are not using the suit property and has done breach of the condition. Therefore, the plaintiff has filed the present suit against the defendant to restrain them regarding the transfer or assign suit property to any third person directly or indirectly. Therefore, the present application is filed.

3 On the other side the notice was issued to respondent Nos.2 and 3 which on service have filed their joint reply vide Exh.22 and has stated that the plaintiff has no authority to file this suit and the suit is based on false and frivolous facts as plaintiff has not produced any authority to file this suit and plaintiff has very clearly stated that both the shops are different no specification of the suit property is provided by plaintiff. Further, it is stated that

the municipal tax bill is coming jointly for the said property he has denied all the averments made by plaintiff and stated that no permanent construction or changing the identity the suit premises has been done by defendant. Rest of the say of the defendant is in denial firm. Further they have stated that the defendant No.3 is on daily wages at the suit premises. Therefore, the defendant has vehemently objected that the said application and has prayed for the rejection of the same.

4 Heard accordingly. Heard learned advocate for both the parties and perused the record of the case. Considering the pleadings, record and arguments advanced by learned advocate for both the parties, it appears that the opponent is in possession of the suit premises and as per the contention raised by the opponent regarding record there exist prima facie relation of the landlord and tenant .And the plaintiff has apprehension that the defendant will transfer or assign suit property to third party or who is defendant number 3 in the present suit and if the prayer asked by the plaintiff will not be granted then the defendant will not suffer any hardship rather than plaintiff as the plaintiff is a landlord of suit premises which is admitted by defendant in his reply and the defendant has no right to sublet or transfer or assign suit premises to

third party. In view of the above premise, I am of the view that apprehension made from the side of the plaintiff that if at this stage the defendant their agents or servants will not be restrained from taking possession of the suit property without due process of law then there is likelihood of multiplicity of proceedings because if the defendant or his principal transfer out the above suit properties to others and changes hands other person may become necessary party and court should lean towards weeing that there is no multiplicity of proceedings. Therefore, in view of the above discussion and keeping in mind the well settled proposition of law that in a suit relating to the immovable properties, it is always desirable that during the pendency of litigation, the status quo position is require to be maintained so that multiplicity proceeding in respect of the above stated suit properties may not arise and at the same time the court has also to consider the factor that the proceedings should go on as far as possible so smooth that the decision can be arrived at between the parties who are on records as early as possible. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad

interim injunction pending the suit. Issuing direction to maintain status quo in relation to the disputed property is a well-known method and the usual order made during the pendency of a dispute for preserving the property and protecting the interest and right of tenant and owner till the adjudication is made. A change in the existing situation is fraught with the danger of prejudicing the rights of both the parties, yet to be determined as the maintenance of status quo during the pendency of the suit is necessary so that the disputed issue pertaining to suit property can be adjudicated and rights to be decided in favor of the one after decision of the suit. Thus at this juncture, the plaintiff has prima-facie case and balance of convenience is also in favour of the plaintiff rather than the defendant and if defendant is not prevented from transferring the suit premises to third party then the irreparable loss may cause to plaintiff which is not compensated in terms of money. Earlier an order to maintain status quo of the suit premises has been passed and the same is continued till date and in my view, it is just and proper to make it absolute till final disposal of the suit. Hence, I pass following order:

ORDER

- (1) The present application is hereby allowed and both the parties are directed to maintain status quo of the suit property till the final disposal of suit.

(2) No order as to costs.

Pronounced and signed in the open Court to-day i.e 29th
July, 2019.

Ahmedabad.

Date: 29/07/2019.

(Amit Harish Narang)
Chamber Judge, UIC No.GJ01312,
Small Causes Court,
Ahmedabad.