

**ORDER BELOW EXH.6 IN**

**H. R. P. Suit No. 125 OF 2024**

Mr.F. A. Shaikh, learned advocate for the plaintiff.  
Mr.N.C.Nayak, learned advocate for the defendant.

**CORAM : H. G. Mali, Judge.**

1. The plaintiff/tenant has filed this application seeking ad-interim injunction under the provision of Order- 39 Rule- 1 and 2 and Section 151 of Civil Procedure Code. The brief facts of the plaintiff's application are as under :
  - 1.2 The plaintiff is registered public trust and kept the suit premises i.e. first and second floor on rent since 12.6.1967 by executing rent agreement from the defendant/owner and plaintiff is tenant since more than 57 years and plaintiff i.e. Pankaj Kelvani Mandal has been conducting various educational activities from so many years and in the suit property a college for classes 1 to 10 and B.Ed college has been running and many students come to study there. The defendant trying to cause obstruction, hindrance, interference in the use and occupation of the suit premises and intends to take forcible possession of the suit premises from plaintiff and defendant has given undated notice to the plaintiff stating that with unanimous consent of all the officers, executive members, administrative members of the Dashkoshi Vidya Mandal, the building of the Vidya Mandal wants to complete demolish and wants to rebuilt the same and therefore, informed the plaintiff to shift to any other place. The defendant has purchased the raw building material and persons,men of the defendant was standing in front of main gate and did not allow anyone to enter and did not allow any vehicle to enter in the suit premises and started construction of a wall between the building

boundary and open ground, due to which the defendant has started illegal construction that close the three gates leading to the open plot/ground of the building and is causing trouble to the people, students coming to the school and requires to remove the construction of wall and open the door and defendant has given threat to plaintiff and therefore, plaintiff has given application on dtd.13.6.2014 to AMC and also issued registered A.D. notice on dtd.13.6.24 to the defendant and it is necessary to restrain the defendant from doing illegal construction work and if defendant will make construction of wall, it will cause great hardship for egress and ingress way of students and hence, this application and prayed to pass order for immediately remove the rough construction of wall and open the door and also restrain the defendant from taking illegal and forcible possession of the suit premises from the plaintiff and restrain the defendant from causing obstruction, hindrance and interference in use and occupation of the suit premises by the plaintiff and prayed to allow the application.

2. Following service of summons and notice, the defendant appeared through its advocate and submitted its written statement at Exh.24, wherein denied almost all the facts of the application; the plaintiff has shown the open plot/ ground as suit property but defendant has never given open plot or ground on rent to the plaintiff, the defendant has given on rent two building to the plaintiff, in one building consisting of basement, first floor, second floor and other building consisting of first floor and second floor except that no any building or open plot/ground given on rent to the plaintiff. The defendant denied para-2 of the plaint, the plaintiff has mentioned in the plaint, the open plot, school constructed building and other building of two floor, as suit property but is it not true and in other building which is mentioned as suit premises by the plaintiff, there is office and hall of

the defendant at the ground floor. The plaintiff has taken the suit property on rent by executing rent agreement of dtd.12.6.1967 but thereafter, leave and license agreement executed in the year 1975 for 11 months and 29 days between plaintiff and defendant and the plaintiff has suppressed said facts of leave and licence agreement from the Court. The plaintiff have to prove that plaintiff is using various educational activities. The defendant have never given open land/ field on rent to the plaintiff and plaintiff have to prove that he used to pay Rs.1051/- as first monthly rent and thereafter pay Rs.3040/- as per month rent to the defendant. The plaintiff has also suppressed that the plaintiff has filed H.R.P.Suit No.111/1996 against defendant and judgment and decree has been passed in this suit after hearing both parties on dtd.22.3.2004 and plaintiff has suppressed this fact. It is not true that there is a egress and ingress way from open plot of the suit property and it is also not true that there is parking in the open plot and students not used the open ground/plot for any other activities. The defendant has never given any right to the plaintiff to move from one building to another building through open plot/ground and open grounds have never been rented to the plaintiff and plaintiff has no any right to use the open ground directly to move from one building to another building and plaintiff is not entitled to ask or claim such right or usage and plaintiff has filed this application and suit to harass the defendant and there is no any right of the plaintiff on open ground and open ground is not given on rent to the plaintiff.

The defendant further stated that they have made legal construction of wall in its ownership land and defendant have legal right to do construction in his ownership land and construction of wall which the defendant have constructed does not include the rented premises and defendant has made construction of wall slightly away from the suit premises. Suit of the plaintiff is barred by Bombay

Public Trust Act.

- The description of the suit property as mentioned by the plaintiff is false and plaintiff has mentioned only Town planning Scheme No.627 paiki 627/1 Pankaj Kelvani has been running Pankaj Vidhalaya, Taraba Bal Vihar and Pankaj Education Center and in scheme No.627/2 there is M.M.Patel college of education and ground floor is ownership of defendant and there are other halls next to the main hall and another hall on the first floor and plaintiff has suppressed this fact from the learned Court. The plaintiff has filed this suit to harass the defendant.
- Defendant have strong objection against Court commissioner report dtd.19.6.2024. Before filing this suit, the plaintiff has filed Civil Suit No.2319/1983 wherein consent decree has been passed with consent of both parties. The plaintiff has not preferred any Civil Appeal against the judgment and decree passed in H.R.P. Suit No.111/1996 and wherein judgment and decree was passed stating that only the constructed portion was rented to the tenant and plaintiff's relief regarding the open ground/plot was rejected by the Hon'ble Court, despite the fact that the plaintiff is well aware of this fact, the plaintiff has filed this suit regarding these two open grounds/plots in the Court for the second time and mentioned the open grounds/plots as rented premises in present suit

The disputed property mentioned in H.R.P.Suit No.111/1996 and the disputed property mentioned in present suit are same and plaintiff has misused the process of law and if in the present suit judgment and decree passed, then the judgment and decree previously passed by the Competent Court cease to exist. The plaintiff have made alteration, construction of permanent nature in the suit premises and thereby changed the identity of the suit premises without consent of the defendant and application of the plaintiff deserves to be dismissed and prayed to dismiss the application of the plaintiff

with costs.

3. The plaintiff has filed rejoinder affidavit at Exh.31 against the reply of the defendant and denied the contents of the reply of the plaintiff and relied on the Court commission report and rent agreement and stated that the defendant has made construction in the suit premises and closed the doors of the suit premise and Court commissioner has carried out commission work of the suit premises and submitted his report, and children studying in school faces problem in ingress and egress and restated the facts as stated in present application.
4. The following issues arise for final adjudication of present applications.

**: I S S U E S :**

1. Whether the case of the plaintiff is prima-facie ?
  2. Whether the principle of balance of convenience is in favour of the plaintiff ?
  3. Whether refusal or denial of the injunction results into irreparable injury to the plaintiff which cannot be compensated in terms of money ?
  4. What order ?
- 4.1 My findings to the above issues are as under:
- 1) In the negative.
  - 2) In the negative.
  - 3) In the negative.
  - 4) As per final order.

**-: REASONS :-**

For the sake of brevity and to avoid repetition, all the issues are discussed together herein.

**Discussion of Issue No.1 to 4.**

5. Heard, the learned advocates for the parties and perused the record and documentary evidence on record. Considering the facts of the application and submissions made on behalf of the plaintiff as well as the defendant. It is pleadings of the plaintiff that defendant has made kaccha construction of wall and people, students faces difficulty in ingress and egress and prayed to immediate remove the rough wall construction and open the door. But while considering the record, defendant/landlord has not closed the main gate and it is say of the defendant that defendant has not given the open plot/ground on rent to the plaintiff and there is no any right of the plaintiff as a tenant on open plot/ground. The plaintiff has produced the list of documentary evidence at Exh.4 mark-4/1 to 4/14, mark-4/1 is the rent agreement dtd.12.6.1967, mark-4/2 to 4/4 rent receipts, 4/6 is town planning map, mark-4/7 copy of map of City Survey No.627, Mark-4/9 notice issued by defendant to plaintiff, mark-4/10, 4/11 notice issued by plaintiff to defendant, mark-4/12 application given by the plaintiff to AMC, mark-4/13 complaint filed by the plaintiff before Gujarat University Police station, mark4/14 photographs of the suit premises. Wherein at mark-4/8 is copy of judgment in H.R.P.Suit No.111/1996 passed by the Small Causes Court, Ahmedabad on dtd.22nd March,2004, and said suit filed by the present plaintiff against present defendant for permanent injunction and also for declaration, wherein the learned trial Court has partly allowed the said suit and passed order as under:

“It is hereby declared that the plaintiff-trust is a lawful tenant and in possession of alleged constructed premises possessed by the plaintiff-trust i.e. Pankaj School Building and upper floors and portion which are over and above alleged Hall. The rest of the plaintiff’s suit stands dismissed”

it is crystal clear that the learned trial Court have already decided that the plaintiff trust has no any tenancy rights over two open plots/grounds. So far as rent agreement at mark-4/1 is concerned, said agreement of dtd.12.6.1967, it shows that the defendant trust has accepted certain limitation in use of two plots/open grounds but said documents do not declare, admit or give any tenancy right or occupation in respect of said open two grounds/plots to the present plaintiff-trust and defendant trust has stated that after said rent agreement another leave and license agreement executed between them for 11 months 29 days in the year 1975 the plaintiff trust has not produced leave and license agreement of the year 1975. It is crystal clear that there is no any tenancy right of the plaintiff-trust in respect of the two open plots/grounds.

The Id.advocate for the plaintiff has relied upon the cited judgment reported in C.WPPIL/118/2020 of the Hon’ble Gujarat High Court in the case of Amit Manilal Panchal Vs State of Gujarat dtd.26th February,2021.2) R/WRIT PETITION(PIL) SUO MOTU CONGNIZANCE, Hon’ble High Court of Gujarat, 3) Writ Petition(civil) No.483 of 2004 Hon’ble Supreme Court of India, in the case of Avinash Mehrotra Vs. Union of India and Ors. Dtd.13 April, 2009. The judgments produced by the learned advocate for the plaintiff trust is not much helpful to the case on hand, at this stage.

6. The plaintiff-tenant has instituted this suit for permanent injunction against the defendant-landlord and moved this ad-interim injunction application for the same relief. It is pleadings of the plaintiff that

defendant has made illegal rough construction of wall and closed the door of the suit premises and therefore, students, people facing difficulty for ingress and egress and plaintiff has carried out Court commission of the suit premises. As against the defendant has stated that they have made legal construction of wall in its ownership land and defendant have legal right to do construction in his ownership land and construction of wall which the defendant have constructed does not include the rented premises and defendant has made construction of wall slightly away from the suit premises. Defendant has filed objection at Exh.29 against Court commission report. Defendant has stated that there is no egress and ingress way from open plot of the suit property and there is no parking in the open plot and students not used the open ground/plot for any other activities, the plaintiff used to move from one building to another building through open plot and the defendant has never given any right to the plaintiff to move from one building to another building through open plot/ground and open grounds have never been rented to the plaintiff and plaintiff has no any right to use the open ground directly to move from one building to another building and there is other gates, doors are there for egress and ingress of students and students are not facing any problem.

In view of the facts and circumstances, their exists relationship of tenant and landlord between the plaintiff and defendant but the plaintiff trust has not produced any cogent documentary evidence to prove that open ground/plot is rented to the plaintiff and open plot is its rented premises. Considering the records, it clearly transpires that if we see the relief claimed by the plaintiff-tenant in the present applicant, the plaintiff has asked for same temporary relief, which he has asked for as permanent relief in the suit prayer clause, in these circumstances, if this application is allowed then the plaintiff will get the final relief at the interim stage,

this view is also supported by the judgment of the **Hon'ble High Court of Gujarat reported in 1997 (2) GLH page-767 in the case of Jamnagar-Rajkot Gramin Bank Officer Association and another Vs. Jamnagar-Rajkot Gramin Bank and another.**

Looking to plaint and ad-interim application of the plaintiff, plaintiff has prayed same prayer in the suit as well as ad-interim application, it is well settled general proposition of law that mandatory injunction at the interlocutory stage should not normally be granted which has the effect of granting the final relief. If ad-interim application of the plaintiff is allowed, then suit of the plaintiff will automatic allow and if this application is allowed, then the plaintiff-tenant will get the final relief at the interim stage, so defendant will cause irreparable loss and there is no meaning to file this suit. Hence, relief as per para 13(a) and 13(b) of ad interim injunction application cannot be allowed in favour of the plaintiff. The plaintiff ought to have prove his case by producing supportive documentary evidence. Therefore, in the present case, the plaintiff has prima facie not proved his case. Here, it is settled principle of law that the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also not in his favour and plaintiff will not suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. In this case plaintiff is not able to prove his prima-facie case, balance of convenience is not in favour of the

plaintiff and hence, I hold the issue No.1 to 3 in the negative and pass the following order for issue no.4 :

**: ORDER:**

1. The application at Exh. 6 is hereby rejected.
2. The ad-interim relief, order of status-quo granted earlier, if any, at the time of institution of the suit, is hereby vacated from today.
3. Costs will follow the results.

Pronounced and signed in the open Court today i. e. 10<sup>rd</sup> day of November, 2025.

Date :10-11-2025

Place : Ahmedabad

(H.G.Mali)  
Chamber Judge  
UIC No.GJ01173  
Small Cause Court No.13.  
Ahmedabad.