

Order Below Exh.6 in H.R.P. Suit No.280/2021

Appearance:-

Mr. M. J. Shah, learned advocate for the plaintiffs.

No one appeared on behalf of the defendant.

Coram:- Mr. V. S. Dave, Judge.

1. The plaintiffs have filed this suit as well as this application against the defendant.
2. The plaintiffs have prayed to grant temporary injunction against defendant restraining him from transferring, assigning, letting and subletting or in any other manner the possession of suit premises to any third party and also restraining him from carrying out any kind of alterations or demolition in the suit premises without the consent of the plaintiffs and also restraining him from making illegal encroachment and using the illegal encroachment in the suit premises and also restraining him from making Kaccha and Pakka construction in the suit premises till final disposal of the suit.
3. Looking to the record, the process is duly served on the defendant, but the defendant has not appeared before the Court, therefore, the **plaintiff has filed an application vide Exh.15** to proceed the matter exparte against the defendant and the Court has passed an order below the said application to proceed the matter exparte against the defendant. Hence, this matter shall be decided on merits considering whatever evidence are produced

on record by the either party. The Court, however, has also taken into consideration the merits of the case, so as not to deprive the defendant of his legitimate right to oppose the application.

4. I have heard the arguments of learned advocate Mr. M. J. Shah, appearing on behalf of the plaintiff and he has argued as per the pleadings and evidence on record. On behalf of the defendant, no one has appeared before the Court and argued out the matter.
5. Taking into consideration the pleadings as well as evidence of the parties on the record, following points emerge for my consideration and determination to decide this application, which read as under:

P o i n t 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 ?
- 6 My reply to the above points are as under:
1. In the affirmative.
 2. In the affirmative.
 3. In the affirmative.
 4. As per final order.

7. My reasons to the above reply of points are as under:

Reasons

Joint discussion of point nos.1 to 4:

8. Considering the facts of the application and submissions made on behalf of the plaintiffs, in the present case, the relationship between the parties as a landlord and tenant is undisputed fact. It is established law of interim injunction that the plaintiffs must prove their prima facie case for getting equity relief of interim injunction. In the present application, the plaintiffs have pleaded that the defendant is the tenant of the suit premises before the year 1980 and defendant has paid the rent of the suit premise till 31/12/2018 to the plaintiffs and the defendant has not paid the rent of the suit premises since 01/01/2019. Plaintiffs have further stated that defendant has acquired the suitable accommodation and the plaintiffs have apprehension that the defendant may transfer and assign the suit premises to third party. The plaintiffs have shown several grounds to grant interim injunction against defendant. Looking to the record, the plaintiff has produced documentary evidence vide Exh.4 and looking to the mark-4/1, which is a xerox copy of the P.T.R of the plaintiff trust. Further, looking to the mark 4/2, which is a xerox copy of the Certificate of the registration of the plaintiff trust. Looking to above marks Nilkanth Yogashram Mahadev Trust is under Public Trust Registration

no.A/864/Ahmedabad. Further, looking to the mark-4/3, which is a xerox copy of the notice given to the defendant by the plaintiff's learned Advocate and mark-4/4 is a xerox copy of receipt of Registered A.D. and mark-4/5 is a xerox copy of the acknowledgment.

9. Looking to the record, defendant has not appeared before the Court, so it prima-facie seems that the plaintiffs are landlord of the suit premises and the defendant is tenant of the suit premises. The plaintiffs have pleaded that the defendant is the tenant of the suit premises and he may transfer or assign the suit premises to third party, but, the defendant has no rights to transfer or assign the possession of suit premises to any third party and in that case plaintiffs have prima facie case and balance of convenience is also in favour of the plaintiffs and if the defendant succeeds in his motive, then there is no meaning to file the present suit and being a landlord the plaintiffs will have to suffer irreparable loss. Therefore, considering this aspect, the plaintiffs are entitled to get interim injunction. Refusal or denial of injunction would cause great hardship and inconvenience as well as such injury to the plaintiffs which cannot be compensated in terms of money. Whereas, the defendant would not suffer any hardship or inconvenience or any other injury by granting of injunction. Hence, I hold **Point Nos.1, 2 and 3** in “**affirmative**” and I pass the following order in respect of **Point No.4** in the interest of justice:

ORDER

1. An interim injunction application vide **Exh.6** is hereby **allowed**.

2. The defendant is hereby restrained from transferring, assigning, letting and subletting the possession of suit premises in any other manner to any third party and also restrained him from any doing any kind of alterations or demolition work in the suit premises without the written consent of the plaintiffs till the final disposal of the suit and the defendant is also restrained from making any encroachment and using the illegal encroachment in the suit premises and also restrained him from making Kaccha and Pakka construction in the suit premises till the final disposal of the suit.

2. The costs shall follow the result of the suits.

Pronounced and signed in the open court on this 29th day of September, 2023.

Date : 29-09-2023.
Place : Ahmedabad.

(V. S. DAVE).
Chamber Judge,
Small Causes Court No.13,
Ahmedabad.
UIC No. GJ01138