

ORDER BELOW EXH.5 IN
REGULAR CIVIL SUIT NO.26/2021

1. **Main Dispute:** Herein this case, the present plaintiffs are the legal representatives, heirs and daughters of Kalidashbhai Leharbhai Vasani who was a lawful owner and occupier of the agricultural land viz. Survey No.295/1 ad-measuring 18,810 Sq. feet situated at Ahmedabad-Bhavnagar highway in Town Dhandhuka, Tal. Dhandhuka, Dist.-Ahmedabad (hereinafter referred as "suit property") which was converted for commercial purpose and the late father of the plaintiffs had executed a lease deed for the period of 10 years in favour of Bharat petroleum Corporation Ltd. and the same was further renewed and the agreement came to be remained in force until 30/11/1982. That the after 1983, without any agreement, the defendant No.1 had continued with an unauthorized and illegal possession of the suit property and transferred the same in favour of the defendant No.2 without consent of the present plaintiffs though the defendants have no right, title and interest of the suit property. Therefore, the present suit is filed by the plaintiffs for the

declaration and permanent injunction towards the suit property.

2. Brief facts of the present suit: That the suit property bearing Survey No.295/1 ad-measuring 18,810 Sq. feet situated at Ahmedabad – Bhavnagar highway in Town Dhandhuka, Tal. Dhandhuka, Dist.-Ahmedabad was converted into non-agricultural land vide order dated 11/12/1963 passed by the DDO, Ahmedabad. That the forefather of the plaintiffs had executed a lease deed dated 01/12/1961 for the period of 10 years in favour of Bharat petroleum Corporation Ltd., for the establishment of Petrol Pump outlets in which as per the terms and conditions, the said land was to be utilized by only Bharat Petroleum Corporation Ltd., for installation of its own petrol pump outlet including diesel outlets and the same was not permitted to be operated by any third party. Later on, expiry of ten years' period, the lease came to be renewed for the further period of five years and in this way, the same was further renewed and the agreement came to be remained in force until 30/11/1982. Further the forefather of the plaintiff i.e. Kalidashbhai Laherbhai Vasani had already

executed a Will in favour of the present plaintiffs dated 05/04/1978 which was came to be registered in the office of Sub Registrar, Botad vide Sr. No.441 dated 09/04/1978. That after 1983, without any agreement, the defendant No.1 had continued with an unauthorized and illegal possession of the suit property and transferred the same in favour of the defendant No.2 without consent of the present plaintiffs. It is further submitted that the plaintiff had never executed any lawful lease agreement in favour of the defendants and the defendants do not have right, title and interest to continue with the possession of the suit property and hence, it is submitted that the Court may kindly direct the defendants to vacate the suit land and the same may kindly be handed over to the plaintiffs. Therefore, the plaintiffs have prayed to restrain the defendants, their power of attorney holder, their authorized signatories, their agents from transferring, assigning the suit property in favour of any third party or creating any third party rights in any manner till the finalization of the suit property.

3. The notice/summons were duly served to the defendants in which defendant Nos. 1 and 2 have appeared before the Court through their Ld. Advocate and filed their written statement vide Exh.27 wherein they denied all the facts as narrated by the plaintiffs in their plaint. It is contended that the plaintiffs have no right to file such type of suit and further stated that all the facts as mentioned by the plaintiff are false and fabricated hence, it is required to be rejected. In contrary, the defendants have highlighted that earlier the plaintiffs had filed the suit before present suit in this Court viz. Regular Civil Suit No.144/1987 which was rejected by this Court and the respective appeals in the District Court as well as in the Hon'ble High Court and later on in the Hon'ble Supreme Court were also rejected and the plaintiff was got failure and in the said case, the plaintiff was also failed to give the prior notice before filing that case. Further, stated that now the plaintiff has started the second inning and the notice was given by his Ld. Advocate for the termination of the tenancy before filing the present suit. By this way,

the plaintiff has tried to create a new cause which is not tenable in the eyes of law. It is further stated that the present suit is barred by the res-judicata. Moreover, it is clarified that the defendant No.3 is the dealer of the defendant Nos.1 and 2 and he is not such tenant of the defendant Nos.1 and 2. Further, it is highlighted that when the lease agreement was executed for the first time in respect of the suit property, the suit property was open then it was constructed with permission of necessary authority and the level was surfaced by investing huge amount for the purpose of carrying out Petrol and Diesel business in the suit property and necessary machineries, pump and underground tanks were also constructed by the defendants. Further narrated that as the prices of the suit land is increasing day by day, the plaintiff has with malafide intention filed the present suit illegally. Further, contended that the plaintiff has filed to show the surroundings of the suit property in the present plaint and stated that the suit property is possessed by the defendant since last long while the plaintiff is residing at

Ahmedabad city and he is not residing in Dhandhuka and he has no any necessity for the suit property. It is further stated that the monthly rent has been regularly paid to the plaintiff by the defendants and the plaintiff is not entitled for the increment of the rent of the suit property. By this way, the defendants have prayed to dismiss the present suit with high cost. The defendant No.3 has adopted the written statement of the defendant Nos.1 and 2 and pursis in this regard has been filed at Exh.28.

4. The plaintiff has argued as per the present application which is not repeated here for the sake of brevity and convenience. The plaintiff has mainly relied upon the documentary evidences which have been prima-facie perused and referred in the reasoning where necessary.
5. Considering the above facts, the following issues are necessary for the determination of present application under order 39 rule-1,2 of The Civil Procedure Code:-
 - 1) Whether the plaintiff proves his prima-facie case ?
 - 2) Whether balance of convenience is in

favour of the plaintiff ?

- 3) Whether an irreparable injury or loss will be caused to the plaintiff if an injunction as prayed for is not granted ?
- 4) What order ?

6. My findings to the above issues are as under:

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

-: R E A S O N S :-

Issue Nos. 1 to 3 :-

7. In order to avoid repetition of the facts as well as the arguments of the parties, I have discussed the Issue Nos.1 to 3 together as under :

Before deciding the present application which is filed by the plaintiff under Order-39, Rule 1-2 of C.P.C., it is necessary to consider the three essential ingredients and golden principles for grant of injunction are present or not. These three principles are (i) the existence of a prima facie case (ii) Balance of convenience and (iii) Irreparable

loss and injury. It must exist as a chain. If there is a one missing link in the chain then the injunction can not be granted, even in granting an ex-parte order of injunction, a Court is duty bound to give reasons and on this point the law has been laid down by the Hon'ble Apex Court. Now keeping in mind, the ratio laid down by the Hon'ble Apex Court in the case of **Maria Margardia Sequeria Fernandes and Ors. which is reported in AIR 2012 SC -1727**. Hon'ble Apex Court has held that:- *"it is duty and obligation of the Court to critically examine the pleadings and documents and pass an order of injunction while taking pragmatic realities."*

8. Now, with this back ground, if we peruse the averments made in the plaint as well as in the present application, it appears that the plaintiff has filed the present suit for the declaration and permanent injunction towards the suit property.
9. Herein the case, the plaintiff has alleged that the suit-property was given on lease by their late father in favour of the Burmah-Shell Oil storage and later on it was merged with Bharat Petroleum Corporation Ltd. and the

said lease-deed was expired in the year 1983 and no further renewal was executed to the defendants though they are not returning the possession of the suit property to the plaintiffs. Further it is highlighted by the plaintiffs that in the year 1983 a suit was filed to recover the possession as well as the outstanding amount, which was defective. Hence, another suit in 1987 was again filed by the plaintiffs which was rejected by the Civil Court on the ground that no any statutory notice was given before filling the suit and the respective Appeals were confirmed that order. Therefore, the present suit is filed by the plaintiffs after giving such statutory notice to the defendants.

Now, considering this facts a question arose in the present case that whether it is tenable in the eyes of laws?, whether the present suit is barred by the Res-judicata? These questions have to be decided but not in the present application. It would be proper to decide such issues after recording the evidence. As such issues are mixed questions of the facts as well as the laws.

10. Herein the case, both the parties have

admitted that the appeals were rejected by the Hon'ble High Court and the Hon'ble Supreme Court but either parties has failed to produce the order of the said appeals for the prima facie consideration of this Court. Therefore, at this juncture it is not justifiable to discuss such issues.

Now, prima-facie on perusal of the document viz. Mark 33/1, *which is the index of the sale-deed of the property viz. plot no.1 of R.S. No. 295-A*, it appears that the said property is sold by the plaintiffs to Vyas Jayantlal Jethabhai. And perusing the document viz. Mark 35/5, *which is the copy of the sale-deed of the property viz. plot no.2 of R.S. No. 295-A*, it appears that the said property is sold by the plaintiffs to Ghoghari Ashrafbhai Gulabbhai. Now, considering the suit-property it is mentioned as R.S. No. 295/1. Therefore, the question arose that whether the suit-property is same as the above mentioned sold properties or not? Considering the entire records of the case it is not clarified by the either parties. But at this juncture, on prima facie perusal the aforesaid documents, it can not be denied that the suit property has been sold to the third parties.

Therefore, right now, the plaintiffs have any title or interest in the suit-property is question of the evidence. Similarly, whether the third parties are necessary to join in the present suit? Whether the present suit is barred by the non-joinder of necessary parties? These questions are also the matter of evidence and without recording evidence, at this juncture, it is not proper to decide in the present application.

Therefore, at this juncture it can be said that the present parties only are not the interested parties but there are others too, who have any kind of interest in the suit properties. Therefore, when the lease-deed is in question and no any renewal has been made for lease, when the suit-property has been sold to the third parties, when the suit for recovery of the possession is rejected, who is in actual possession of the suit-property is also the question of evidence and the plaintiffs have failed prima facie to establish their possession and their title in the suit-property accordingly, it can be said that the plaintiffs have failed to prove their case prima-facie.

11. Now, with this back ground, if we peruse the well established ratio of the Apex Courts; that

"The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of temporary injunction. The burden is on the plaintiff to satisfy the court by leading evidence or otherwise that he has a prima facie case in his favour.

It is no part of the court's function at that stage to try to resolve a conflict of evidence nor to decide complicated questions of fact and of law which call for detailed arguments and mature considerations. These are matters to be dealt with at the trial. In other word, the court should not examine the

merits of the case closely at that stage because it is not expected to decide the suit finally. In deciding a prima facie case, the court is to be guided by the plaintiff's case as revealed in the plaint, affidavits or other materials produced by him."

Thus, according to above discussions, this Court observes that the plaintiff has no prima- facie case.

12. Moreover, looking to the entire records of the case, I am of the opinion that at this juncture i.e. at the time of deciding the present application which is in nature of interlocutory kind of application, it is not desirable to evaluate evidence produced by the parties but at this juncture, a Court can only prima facie peruse the documents and on the basis of this, the Court can find out whether the prima facie case is made out or not and therefore, on the back drop of the legal provisions of Order-39, R-1 & 2 of C.P.C. and the ratio laid down by the Hon'ble Apex Court in their numbers of judgments, at this stage, the facts, which are in dispute and in question, it is required to be adjudged by giving their evidence and therefore, at the

time of deciding this application, this Court is in the opinion that plaintiffs have not made out their prima facie case.

13. Under these circumstances, when it is not the stage to consider the evidence and without adducing evidence in the present case, this Court is not in a position to take any decision. This Court can take decision only on going through the cogent documentary evidences supported by the affidavit of the plaintiffs. When the facts as mentioned by the plaintiffs are supported, then the present dispute can be decided only on the basis of clear evidences.
14. Further, while considering the ratio laid down in the case of

" Gujarat Bottling Co. Ltd. and others v. Coca Cola Co. and others (1995) 5 SCC 544 at 574, the Apex Court has highlighted that

'The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved

in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies.'

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.

15. Under the circumstances, when it is not the stage to consider the evidence and without adducing evidence in the present case this Court is not in position to take any decision. This Court can take decision only on going through the cogent documentary evidences supported by the affidavit of the plaintiffs. When the facts as mentioned by the plaintiffs are supported, then the present dispute can be

decided only on the basis of clear evidences. This Court does not think appropriate at this stage to pass any interim order. Therefore, issues Nos. 1 to 3 are answered in Negative and the following order is passed in respect to the Issue No.4.

-: O R D E R :-

- 1) The present application filed by the plaintiff vide Exh.5 is hereby rejected.
- 2) Looking to the facts and circumstances of the case, there shall be no order for costs.

Pronounced in the open Court today on 26th day of April, 2024.

Date :26/04/2024

Place:Dhandhuka

**[Yunusahmed Iqbalhussain Shaikh]
Principal Sr. Civil Judge,
Dhandhuka, Ahmedabad (Rural)
UID : GJ00967**