

RCS 282/2012

ORDER PASSED BELOW EXHIBIT 5 & 15

1. *The brief facts of the Plaintiff's case are that the disputed property is situated in Vallabh Vidhyanagar, Anand with the City Survey number 1171 admeasuring 420.21.00 square meters in which the construction of the Ashram along with the rooms is done and on which the Ashram by the name of Krushnanand Gurugyan Prachar Ashram is situated from 1968 of which the Swami Keshavteerth Krishnanand Swamy is the owner. On the said ashram various religious and spirituals preaches are given by the Swamiji for the betterment of the socieity. On the Akarni Patrak the name of the Keshavteerth is running and the plaintiff is taking care of the Ashram since from many years and they have got the said right to administer and take care of the Ashram from the will of the Swamiji Krushnanandji dated 14/09/2010. Hence dated 14/09/2010 as the Sants of the Ashram decided to give the plaintiff through the order and promulgation the power to maintain and take decision and even Power of Attorney is also given to the Plaintiff with regard to the C.T.S. appeal and etc. Hence, the Swami Keshavteerthji died on 15/6/2012 and since then the plaintiff along with his family residing in the Ashram and also is taking care of the Ashram and the defendant could not digest the said fact, so he prepared the false document of creating a committee he being the mantra with the malafide intension of taking away the Ashram property. Hence the cause of action has arose and the present suit is filed for the declaration and the Temporary injunction to protect the pious rights of the Plaintiff.*

2. As per the civil procedure the suit was admitted and the notice was issued to the other side. The other side appeared with his advocate and filed his and filed his reply vide an **exhibit 12**. The defendant has strongly rejected all the contents of the plaint and its averment and the facts of plaintiff administering the Ashram. He even denied the fact that on the disputed property the Krushnand Gurugyan Prachar Ashram is situated. He denied that fact that the said Ashram was given by Swami Abhedanand through will to Swami Krushnanad dated 14/09/2010 and the plaintiff was then after taking care of the administration. Further the defendant has also claimed the injunction by stating the fact that, actually the said disputed property was sold by Charutar Vidhya Mandal and from then the said disputed property converted into a Ashram and taken care by the Swami Atmanandgiriji. Later Swami Atmanandgiriji through Will gave the right of mere administration of the Ashram to the Swami Abhedanand and no right of ownership or any other further rights were not given. Then swami Abhedanand under took the administration of the Ashram from 1974 to 1980 and he died in 1980 and since the ashram administration was vacant, and later, due to the vacant post for the administrator, the Mahatmas and the Sants gathered and they formed the committee to run the Ashram under the Chairmanship of Swami Krushnandji and the defendant is serving in the committee as Mantri since 1980. Finally as due to the old age Swamiji Krushnandji died in 1995 and then Swamiji Keshavteerth ji starting care of the Ashram and later due to his old age and bad health his grandson was called who is none other than the plaintiff was called with his family for the taking care of the Swami with the approval of the committee. As later the health of the Swami Keshavteerth was not good, so with the decision of the committee Mataji Omkarji was called in 6/2/2008 for Bhajans and Kertan etc.. The plaintiff is relying on the will of the Swami Keshavnand dated 27/11/2995 which does not describe how he got the property, hence it is bogus and viod ab intio. Hence the Defendant has

right to counter the suit and also to preserve the right of the administrator as he being the mantra. Hence even he claimed the counter temporary injunction vide an **exhibit 15** so the Mataji Omkarnanji should not be restricted from continuing the administration of the ashram.

3. *The Plaintiff in support of his claim has produced various documents:-*

- 1) Xerox of City Survey number 1171 vide a mark 3/1.
- 2) Xerox of the Will entry vide a mark 3/2.
- 3) Order where plaintiff was given the administration of the Ashram vide a mark 3/3.
- 4) Xerox of sale document of Ashram vide a mark 3/4.
- 5) Entry of trust document vide a mark 3/5.
- 6) Xerox copy of reply presented before charity commissioner vide a mark 3/6.
- 7) Xerox of memo CTS Appeal 60/2011 vide a mark 3/7.
- 8) Reply in CTS Appeal 60/2011 vide a mark 3/8.
- 9) Xerox of POA in CTS Appeal 60/2011 vide a mark 3/9.
- 10) Death certificate of Swami Keshavteerth vide a mark 3/10.
- 11) Xerox of Will of Swami Keshavteerth vide a mark 3/10.
- 12) Copy of written complaint made in police vide amrk 3/11.

4. The Defendant in support of his defense and further averment has produced following documents:-

- 1) *Xerox of working committee of ashram vide a mark 13/1.*
- 2) *Xerox copy of first will of the Swami Aatmanandgiri vide a mark 13/2.*

3) *Xerox copy of second will of the Swami Aatmanandgiri vide a mark 13/3.*

4) *Xerox copy of said will of the Swami Krushnand vide a mark 13/4.*

5. Now the court after taking into consideration pleadings from both the sides and also appreciating the documentary evidence adduced from both sides the court has framed following **points for determinations:-**

A). Whether the plaintiff proves that he is entitle for relief claimed vide an exhibit 5?

B). Whether the Defendant proves that he is entitle for relief claimed vide an exhibit 15?

C). What order?

6. I answer the above points as under:

A). In the AFFIRMATIVE.

B). In the NEGATIVE.

C). *As per final order.*

-: R E A S O N S :-

7. **ISSUE NO 1 :-**

7.1) *Thus the rational behind the provision of Order XXXIX of the Code of Civil Procedure, 1908 as laid down by **Hon'ble Supreme Court in the case of M. Gurudas and Ors.,** can be summarized as "While considering an application for injunction, the Court would pass an order thereupon having regard to prima facie, balance of convenience and irreparable injury".*

7.2) The Plaintiff has strongly argued that the defendant has no right and he is claiming right for the third person called Mata Omkarji though being the Mantri of the Committee. Further Plaintiff is intended to make the trust for the betterment of the Ashram but the defendant is creating hurdles. The name of the Swami Keshavteerthji speaks in the Akarni Patrak with the city survey number 1171. The Will and the Court Commissioner report even support the claim of the plaintiff taking care of the administration of the ashram. The plaintiff was called by the Swami Keshavteerthji for the taking care which is admitted fact and the same is supported by the court commissioner report too. Further the defendant has only relied on working committee produced vide a mark 13/1 where it has no sign and even it is Xeroxed hence it cannot be relied. The plaintiff in support of his claim is relying on;

- 2000(0) GLHEL HC 2008
- 2003 (3) GLR 2759
- 2007(1) GLR 277
- AIR 1997 SC 2719
- 1985(1) GLR 139

And the other side has strongly rejected all the contentions of the Plaintiff as they being the false and fabricating.

7.3) *After going through the records, perusing the documentary evidence, considering the oral and written arguments produced by the parties, it is found on record that the plaintiff is claiming himself to be sole administrator of the Ashram, on the bases of following:-*

*Will of the Swami Keshavteerthji (who according to him is the owner of the Ashram) dated 14/9/2012;

*Order pronounced by the various Sants of the Ashram dated 14/9/2012;

*Admission of the other side that he is living with his family in the Ashram and report of court commissioner;

Now to support his claim he has produced a Xerox copy of Registered Will of the Swamiji Keshavteerthji dated 14/9/2012 vide a mark 3/11 and entry of the WILL produced vide a mark 3/2, whereby rights related to the Ashram have been given to the Plaintiff, now appreciating both the documents the court finds that the said Will is the Registered Will and it is prepared by the person who was found to be the last Gadipath of the Ashram and who has given the said rights of the administration to his disciple cum grandson whose entry cum continuation in the Ashram with his family is admitted by the other side in his reply and counter affidavit and counter injunction application, come what may for the purpose that is not necessary. Once the fact of Plaintiff being in the possession of the Ashram since from 2008 is found to be established, then it is easy to digest the fact that he being the grandson & most trustworthy disciple of the last Gadipath Swami Kesahvteerthji who was called with his family to live in the Ashram for the purpose of taking care of swamiji, so it is natural to accept that in the bad health of the Swamiji, the plaintiff might be taking care of the administration of the Ashram as per the direction of the Swamijij. Further the said fact of he being in the possession further gets the strength by the order promulgated by the sants dated 14/8/09 vide a mark 3/3, whereby all the rights with regard to the administration of the Ashram was given to the plaintiff with the consent of all the sants which even has the sign of the Swamiji Keshavteerthji which is further corroborated by the registered Will of the Swamiji whereby he was given all the rigths. So, this court finds that the plaintiff has the prima facie case to fight the case further and courts finds fit case to give him the chance of establishing his right during the trail. The real crux of the grant of injunction is not depended upon the prove of the case but rather it depends upon the fact that the party is successful in satisfying the court that he should be given a

chance to explain in case in detail and for that injunction is needed so that a order of the court do not become infractutous later on. Due to he being found in the possession of the Ashram that too with the family since from 2008 which is admitted fact by the other side and the same is corroborated by the Will and order promulgated by the Ashram Sants, hence the court reaches to the conclusion that the plaintiff has establishes his prima facie case and he has satisfy the court that he should be given a chance to explain in detail his case to establish his rights firmly otherwise he will be at mighty lose.

Now the other question remains *to be decided with regard to the Balance of convenience. In short, the term* sometimes used in opinions explaining why a requested injunction was or was not granted, referring to the ratio *between* the hardship to the defendant of granting the relief and the hardship to the plaintiff if it is not granted. Another term with a roughly equivalent message is “*balance* of equities,” but there the implication is that one side has more ethically going for it than the other. Now as the possession of the plaintiff along with the family is establish and he has shown his prima facie case then if the injunction is not granted then it will cause extra hardship to the plaintiff, hence it can said that the Balance of convenience is also found to be in the favor of the plaintiff.

Now lastly the point of irreparable lose is concerned which simply means, as per various journal and the books the word means ‘the loss which is not reparable or lose which cannot be compensated at any cost or whose losses cannot be calculated in terms of money’. Now as the possession of the plaintiff with his family is found to be establish and if the injunction of restricting the other side for not dispossessing the plaintiff is not allowed then it will be really a difficult to calculate the lose which the plaintiff will be put into. The pain of family being forcefully dispossessed cannot be thought for compensating it with any amount of compensation and even an effort to calculate the amount

of lose for the same will be a mockery of the family peaceful life and the concept of utalitarian concept of law maximum happiness of for the maximum people. Hence the court is satisfied with regard to the point that if the injunction is not allowed then the plaintiff will put to irreparable lose.

Hence the court finds that the plaintiff has established his prima facie case or the case at the first site and he has also produced substantial prima facie document which could show his balance of convenience in his favor and court even find that irreparable lose will be caused to him if the said interim relief is denied to him. Hence the court finds the result of the first issue in the affirmative.

8.

ISSUE NO 2 :-

8.1) *The defendant is strongly objecting Exhibit 5 & contending for his relief vide an **exhibit 15**. He contended that disputed property was really owned by the Charutar Vidhya Mandal and they sold the same to Gyan Prachar Ashram and firstly the ashram was runned by Swami Aatmanandgiriji, who by Will gave mere right of Administartion to Swami Abhedanandji and no ownership rights were transferred. He further argued that Swami Abhedanandji died in 1980 and the Committee was formed to maintain the ashram under the chairman ship of his fast friend Swami Krushnandji who died on 1995. Then Swami Keshavteerthji came for preaching in 1994-95 and due to his old age his grandson that is plaintiff was called with his family to take care of Swamiji, hence he his claiming right of which he has no right over it. So the mataji Omkarji being the administrator of the ashram and I being the Mantri of the committee has the right to come*

before the court for the protecting the rights of the Mataji Omkarji who has the right to Administer the Ashram and the Plaintiff has strongly denied all the averment of the defendant and has claimed that all the averment are false and fabricated, hence said application to be declined.

8.2) Further the defendant has come before the court *for the relief and for the same he has relied on;*

**Document produced as the formation of the committee.*

Now as the defendant has come before the court for restricting the plaintiff from entering into the disputed property *and taking care of the ashram and claiming the rights of the Mataji Omkarji, for the same he has relied on the document of 1980 vide a mark 13/1 of Working Committee being formed of which he is mantri, but the said document cannot be relied in the absence of sign and date on the document and the said document is not produced with any affidavit of the committee member who has stated on oath about the content of the document. In the absence of any such formality it is difficult to find the case of the defendant and as he is coming as the mantri of the ashram fighting for the right of the mataji Omkarji then the burden on him is higher to establish his right to come before the court on behalf of the Ashram. Hence the court finds the lacuna in the document and this causes the doubt with regard to the veracity of the content of the same, hence the court failed to find any prima facie right of the defendant in the said disputed property. This court finds no case of the defendant why he should be given a chance to establish his right during the trial and till then the injunction should be granted in his favor. Further the question of balance of convenience does not subsist as the defendant is claiming all the right on the bases of he being the*

*Mantri in the Ashram, but as the defendant has failed to establish his prima facie case, so his stand of balance of convenience and irreparable loss also does not stand. As In the case of **Agricultural Produce Market Committee Case**¹, the Hon'ble Apex Court has held that "a temporary injunction can be granted only if the person seeking injunction has a concluded right, capable of being enforced by way of injunction."*

Hence, the defendant has failed to establish his stand as mantri in the ashram, so the court has failed to find any concluded right in the favor of the defendant, so the court is of the opinion that the result of the said issue is in the negative.

9.

ISSUE NO 3 :-

As per final order.

-: O R D E R :-

1. *The application at Exhibit 5 of the plaintiffs is hereby allowed and an application of the Defendant vide an Exhibit 15 is hereby rejected.*
2. *This court further direct Plaintiff not to restrain the general public at large along with the defendant from entering the Disputed Shri krushnanand Gurugyan Prachar Ashram for the purpose of worship only.*
3. *The defendant along with his agents and persons is hereby restrained from causing any kind of hurdle to plaintiff in 'use or administering' the said Disputed Shri krushnanand Gurugyan Prachar Ashram till the final disposal of the case.*

4. Cost of this application shall follow the final decision of the suit.

Today Pronounced in the open Court.

Date:- 30/11/2015

Anand

R. K. Agarwal

8th Additional Civil judge

GJ01341

Anand