

::Spcs No.4/2022 ::

:: ORDER BELOW EXH.05 ::

(1). Plaintiff have filed the present application u/o. 39 rule 1,2 of Civil Procedure Code-1908 seeks an injunction against the defendant to prevent him for selling or transferring the suit land to anyone in any way. Description of the suit properties are as below;

Sr. No.	Land Revenue/City S Survey No.	Measurement of land	Place of land	Kind of land
1.	Revenue survey 522/1 city survey no.125/A	96.062 sq,mtr. 250.838sq.mtr ----- --- 2700.00Sq.Fe et total area	U/2 and 102 Modasa	complex
2.	Revenue survey No.270 paikee 2	202.82 sq.mtr	plot no.26 Dugarvada, Modasa	non agriculture plot
3.	Revenue Survey no.270 paikee 2	167.41 Sq.mtr	plot no.30 Dugarvada, Modasa	non agriculture plot
4.	Revenue Survey	159.27 Sq.Mtr	plot No.31 Dugarvada, Modasa	non agriculture

	No.270 paikee 2			Plot
5	Revenue Survey No.771/ 2	315.75Sq.Mtr.	Plot No.8 Sayra, Modasa	non agriculture Plot
6	Surcvey No.491/1	14.84Sq.Mtr	Shop No.10 Ground Floor Shukan Arched Modasa	Commercial Complex

The plaintiff has stated in his application that he is a Gynecologist and holds a degree as D.G.O.(Gynaecology). He completed his studies as a doctor in 2004. And earlier he was working at Meghraj General Hospital. Good salary and incentives were available. His father worked in Sanchar Nigam Limited in the Government of India. Thus the plaintiff was financially prosperous from the beginning. The plaintiff wanted to build a dispensary-hospital for his personal use and personal earnings after obtaining his doctor's degree. The plaintiff inquired about purchasing land for building a dispensary at Modasa. Investigation revealed that the claim application is to sell the land mentioned in para 1 and the land is owned by Shukan Member Association Non-Trading Corporation, if anyone wants to buy part of the property he has to become a member. And after paying the amount for the same, the non-trading corporation issues the allotment letter. The plaintiff paid Rs.7,50,600/- to the association from his earnings but the property was to be taken in the name of the defendant. So the plaintiff transferred the amount to the defendant's bank account and the plaintiff's mother also transferred the amount to the defendant's bank account and the amount was also transferred from the bank account of the

person from whom the plaintiff was to receive the amount. Thus, the amount in the savings account of the defendant Citizens Cooperative Bank Meghraj was owned by the plaintiff. Thus, the property mentioned in para 1 -A of the plaint was purchased by the plaintiff in the name of the defendant. So the real owner of the disputed property is the plaintiff but the letter was issued in the name of the defendant as detailed above. The property was purchased in the year 2008 from the earnings of the plaintiff and a letter dated 9/5/2001 was issued in the name of the defendant. Since the possession of the said property was handed over to the plaintiff on 29/11/2007, the plaintiff is running a hospital named Mahalakshmi Hospital in the suit property. And he uses the property for earning as plaintiff doctor and plaintiff also pays property tax. Plaintiff property also pays business tax and light bill. Thus the owner of the suit property is the plaintiff. The defendant has no right or share in the suit property. The defendant only does housework. The defendant holds a doctorate degree from B.H.M.S. But the defendant did not practice at Modasa as a Doctor of Homeopathy after obtaining her doctorate degree. A letter was issued by the Shukan Member Association in the name of the defendant but there was a discrepancy regarding the registration of the allotment letter and the date of the letter. The Dy. Collector of Stamp Duty on 9/5/2001 assessed the arrears of stamp duty and penalty amounting to Rs.3,07,940/- and ordered the said amount to be deposited with the Govt. The plaintiff reimbursed the amount of stamp duty and penalty to the Government as per the order. Such amount is Rs. 3,07,940/- stamp duty and penalty was transferred by the plaintiff from its Bank of Baroda bank account to the bank account of the defendant and the defendant and deposited by the defendant in currency(Chalan) with the Govt on 1/10/2008. The property money referred to as 'BCD' in para 1 of the plaint has been paid by the

plaintiff to the land owners out of the plaintiff's own earnings. And these properties were purchased by the plaintiff in the name of the defendant out of his own earnings for his personal use. The plaintiff is the sole owner of the property. The property mentioned in para 1 of the suit was purchased by the plaintiff from the land owner through a registered sale deed. The sale consideration amount was transferred by the plaintiff from his account of H.D.F.C to the account of the defendant. The cheques of which were given by the defendant in the name of the land owner. Thus the property is in possession of the plaintiff. Thus this property was purchased by the plaintiff from his earnings for his own use.

Similarly, the ground floor property mentioned in para 1 "F" of the plaint has been purchased by the plaintiff from a sale deed registered on 29/6/2017 in the name of the defendant. For that sale consideration the plaintiff on 15/6/17 transferred from his bank account of Kotak Bank of India Modasa to the account of the defendant Rs. 9,50,000/- has been transferred and out of that sale consideration Rs. 4,50,000/- has been paid by the defendant.. Thus the property was purchased by the plaintiff out of his income for his own use and therefore the defendant has no right or share in the property.

Defendant evicted Plaintiff from Plaintiff's Apple City home on 6/9/2020 without cause and did not allow Plaintiff to enter the home. So the plaintiff himself went to his father's house and kept a rented house. The defendant took all the documents of the suit property in the absence of the plaintiff and on 2 October 2020 the defendant left Modasa and settled in Ahmedabad. All the documents of the suit property are in the possession of the defendant.

The defendant has also filed a maintenance petition. The plaintiff is about to file a divorce petition against the defendant. The defendant came

to Modasa three days ago and the defendant threatened to sell the property which the plaintiff had purchased in the name of the defendant. The defendant has no right or share in the disputed property. The defendant seeks to recover the money by mortgaging such property. The defendant has no right to sell, mortgage or lease or gift the disputed property. The present application has been filed seeking that none of the property in question be transferred by the defendant in any way to anyone as it is registered in the revenue records only in the name of the defendant. The plaintiff has sought an injunction restraining the defendant from selling, mortgaging or otherwise transferring the disputed property to anyone.

(2). The defendant has filed his written statement at ex.-28 and has denied the contentions of the plaintiff. The defendant has stated in its answer that the plaintiff's suit is barred by the misjoinder of the parties. The properties mentioned in para 1 of the plaintiff belong to the defendant. The plaintiff had given false confidence and trust to the defendant that the plaintiff would give quiet and direct possession of the said property when the defendant asked for it. By saying that the plaintiff has taken possession of this property. It is not true that the amount in the savings account of the defendant Nagrik Bank Meghraj belongs to the plaintiff. The amount in the defendant's savings account belongs to the defendant. In which the plaintiff has nothing to do. The defendant transferred the amount from his account to Shukan Member Association, the plaintiff did not. It is not true that the property was purchased out of the earnings of the plaintiff. The defendant purchased the property by paying the amount from her own account. The allotment letter of which has been issued in the name of the defendant. The disputed property was given to the plaintiff on the condition that quiet and actual possession of the property would be

returned to the defendant on demand. The plaintiff is the husband of the defendant and the property has been given to the plaintiff to run the hospital. The plaintiff has breached the trust of the defendant. Plaintiff uses the property so plaintiff pays taxes and light bills. The defendant herself is a doctor and has her own income. The plaintiff evicted the defendant from the house. The defendant lives in her parents' house as a dependent of her mother and brother. The plaintiff has not made any accommodation arrangements for the defendant. The plaintiff has misrepresented the facts. Hence, there is no prima facie evidence or balance of convenience in favor of the plaintiff. The plaintiff has not suffered any irreparable injury, therefore, the defendant has prayed for the dismissal of the present application of the plaintiff.

(3). In rejoinder, the plaintiff denied the averments of the written statement of the defendant.

(4). Plaintiff has produced copy of documentary evidence at Mark 4/1 to 4/11 and 25/1 to 25/7. Plaintiff has produced copy of light bill, copy of tax bill, copy of account statement of transfer of money from own account to defendant's account, copy of registered sale deed of disputed properties, copy of membership and allotment letter issued by Shukan Association in the name of defendant, copy of license granted by Modasa Municipality to Mahalakshmi Hospital. , copy of Income Tax Department receipt, copy of telephone bill issued by Bharat Sanchar Nigam in the name of the plaintiff.

(5). **Points for determinations:-**

Following points are arises for the determination of the present application.

1) Whether the plaintiff proves strong prima-facie case in his favor ?

- 2) Whether the balance of convince is in the favor of the plaintiff ?
- 3) Whether plaintiff has got irreparable injury?
- 4) What order ?

(6). Findings:-

My finding thereon are as under.

- 1) In the partly affirmative
- 2) In the partly affirmative
- 3) In the partly affirmative
- 4) As per final order.

:- Reasons for findings :-

Issues No. 1 to 3:-

(7). Before discussing the merits or the demerits of the case, it is pertinent to note down the evidence produced by either of the parties.

(8). By filling the present application, it is averred that plaintiff has strong prima facie case in his favor, plaintiff is able to get successful result at the stage end of the trial, balance of convenience is also in his favor and therefore, prays to grant interim injunction in his favor as claimed in the Para-12 of the present application.

(9). It is pertain to note that the power to grant a temporary injunction is in the discretion of the court, This discretion however, should be exercised reasonably, judiciously and on the legal principles. Injunction should not lightly granted as it adversely affects the other side. Generally, before granting the injunction, Court must satisfied about the

following aspects namely, prima-facie case, irreparable injury and balance of convenience.

(10). The first rule is that the plaintiff must make out a ***prima facie case*** in support of the right claimed by him, Court must be satisfied that there is a bonafide dispute raised by the plaintiff, there is strong case for trial which needs investigation. A prima facie case does not mean a case proved, but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima-facie case has been made out the relevant consideration is whether on the evidence led, it is possible to arrive at the conclusion in question and not whether that is only conclusion which could be arrived at on that evidence. Existence of the prima facie case alone does not entitle the plaintiff for a temporary injunction, but the plaintiff must satisfy the Court that he will suffer ***irreparable injury*** if the injunction as prayed for is not granted and there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. Third condition for granting interim injunction is that the ***balance of convenience*** must be in favor of the plaintiff. In other words, Court must be satisfied that the comparative mischief hardship or inconveniences which is likely to be caused to the plaintiff by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it. 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 favor at the trial; but the plaintiff's need for such protection must 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 under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favor at the trial. The court must weigh one need against another and determine where the balance of convenience lies.

(11). Here in the present case the Ld.Advocate Mr.P.A.Upadhyay for the defendant has argued that the disputed property is in the name of the defendant. Therefore, as per the law of benami transactions, the person in whose name the property is held has all rights over the property. Therefore, the present application of the plaintiff cannot be allowed.

Ld.Advocate for the plaintiff Mr.G.M.Patel has stated in his argument that the defendant has clearly stated in the application for maintenance that all the properties have been purchased by her husband in her name. The defendant herself does nothing. And the defendant has no income of her own. Ld.Advocate Mr.G.M.Patel for the plaintiff has further stated in his argument that the plaintiff has invested the property out of his earnings for his personal use. When a person buys a property in the name of another person out of his own income for his personal use, then the provision of benami transaction does not apply to him. Moreover, proviso (iii) of Section 2(9) (b) of the Benami Property Transactions Act, 1989 states that property purchased by a husband in the name of his wife or child cannot be called a benami transaction. Therefore, prima facie evidence, balance of convenience and standard of non-pecuniary loss being in favor of the plaintiff, the present application of the plaintiff should be allowed.

(11). A perusal of the record from Mark 4/1 which is the copy of Criminal Miscellaneous Application 2579 of 2021 filed by the

present defendant for maintenance wherein the present defendant has stated in paragraphs 5 to 12 regarding the property of the present plaintiff that,”

(પ). આ કામના સામાવાળા કે જેઓ પોતાના વ્યવસાયમાં ઘણી જ સારી આવક ધરાવે છે અને જેથી આ કામના સામાવાળા જે કોઈ મિલકતો ધરાવતા હતા તેમા અરજદાર નં.૧ના નામે પણ મિલકતો ખરીદતા હતા.વાસ્તવિકતામાં આ કામના અરજદાર કોઈપણ પ્રકારનો વ્યવસાય કરતા ન હતા પરંતુ આવકવેરા વિભાગને ધ્યાનમાં રાખી આ કામના સામાવાળા અરજદારના નામે અલગ અલગ વેપાર ઇંધો બતાવી અરજદારના નામે આવકવેરાનું રીટર્ન પણ ભરતા હતા. વાસ્તવમાં આ કામના અરજદાર આવક જાવક સંબંધે કોઈ જ હકીકત જાણતા ન હતા કે સામાવાળા અરજદારના ધ્યાનમાં લાવતા પણ ન હતા.

(ડ).....સામાવાળાએ જે મહાલક્ષ્મી હોસ્પિટલમાં પોતાનું દવાખાનું ચલાવે છે તે દવાખાનાની જગ્યા અરજદારના નામે લીધેલ છે....

(ઢ).....સામાવાળાના દવાખાનાને સંલગ્ન ગજાનન મેડીકલ સ્ટોર્સ ચલાવવામાં આવે છે જેમાં આ કામના અરજદાર નં.૧ ને ભાગીદાર તરીકે રાખવામાં આવેલ છે....જેના આવક જાવક સંબંધની કોઈ જાણકારી આ કામના સામાવાળા દ્વારા અરજદારને કરવામાં આવતી નથી.

(ઠ).....અરજદારના નામે મોડાસા મુકામે એક પ્લોટ તથા શુકન આર્કેડમાં દુકાન આવેલ છે....આ ઉપરાંત અરજદારના નામે ડુગરવાડામાં પ્લોટ ખરીદેલ છે. તથા એપલ સીટી, ઘુણઈ રોડ ઉપર બંનેના નામે એટલે કે અરજદાર નં.૧ અને સામાવાળાના નામે બે પ્લોટ લઈ મકાન બનાવેલ છે.....જે ઘરનો કબજો સામાવાળા પાસે છે.

(ઠ).....આ ઉપરાંત દેવભુમિ મંગલમુર્તિ ફ્લેટ આવેલ છે તેમાં જે તે સમયે અરજદાર નંબર ૧ના નામે સામાવાળા દ્વારા ચાર ફ્લેટ લેવામાં આવેલ છે જે પૈકીનો એક ફ્લેટ વેચેલ છે અને ત્રણ ફ્લેટ હાલમાં અરજદારના નામે છે જેનો તમામ વહીવટ આ આ કામના સામાવાળા કરે છે.

(૧૦).....આ ઉપરાંત આ કામના અરજદારના નામે અમદાવાદ મુકામે બુકલીન

ટાવરમાં ઓફીસ નંબર ૧૦૩ તથા ૧૦૪ મે.કેશવ એસોસીએટના નામથી ખરીદેલ છે અને જેમાં અરજદાર નં.૧નો ૧૦%નો ભાગ સામાવાળા દ્વારા કરવામાં આવેલ છે.

(૧૧).....આ કામના સામાવાળા કે જેઓ પાસે એક મકાન કે જે બંનેના નામે છે તે અને જેની લોન પણ આ કામના સામાવાળા ભરપાઈ કરતા આવ્યા છે પરંતુ છેલ્લા કેટલાક સમયથી અરજદાર સાથે સામાવાળાનું વર્તન બદલાઈ ગયેલ છે અને સામાવાળા તતેમનો ઈરાદો પાર પાડવા તેઓએ લોનના હપ્તા ભરવાનું બંધ કરેલ....

(૧૨).....આ કામના સામાવાળા પાસે શામળાજી મુકામે હોસ્પિટલ છે તથા હિં મતનગર મુકામે આઈવીએફ સેન્ટરમાં પણ ભાગીદાર છે.....આ ઉપરાંત આ કામના સામાવાળા અમદાવાદમાં લો ગાર્ડન પાસે કેપસ્ટોન બિલ્ડીંગમાં ૧૧૦૨ નં બરની ઓફીસ ધરાવે છે.....આ ઉપરાંત સામાવાળાએ તેમની પાસે નોકરી કરતા અજય હસમુખભાઈ પંડ્યાના નામે પણ મિલકતો ખરીદેલ છે અને બેનામી ઘણી મિલકતો પણ સામાવાળા ધરાવે છે. આ ઉપરાંત અજય હસમુખભાઈ પંડ્યા સાથે મેડીકલ સ્ટોર તથા લેબોરેટરીમાં પણ ભાગીદાર છે પરંતુ આ અંગેના દસ્તાવેજો સામાવાળા અમોને ક્યારેય માંગવા છતાં આપતા નથી કે આવી કોઈ જ દસ્તાવેજો જણાવતા નથી."

(12). Ld.Advocate G.M.Patel, Advocate for the plaintiff has submitted that when the defendant has admitted in her pleading that she has no earnings and the plaintiff has purchased all the properties in the name of the defendant, the doctrine of "Estoppel" applies. . And the defendant cannot make a statement contrary to his own previous statement. And the defendant cannot deny his previous statement made before the court.

Ld.Advocate for the defendant Mr. P. A. U. Padhyay has submitted that the fact that the disputed property is in the name of the defendant cannot be denied here either. And therefore if the defendant is deprived of the enjoyment of her own property, the object of justice will not succeed.

(13). At this stage it is necessary to know the provision of Section 115 of the Indian Evidence Act which is as follows.

"Section 115 in The Indian Evidence Act, 1872

115. Estoppel.

When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title."

The defendant in her maintenance petition has clearly stated that her husband has purchased the property in her name i.e. the name of the present respondent. It is fact that the disputed property are in the name of the defendant. So whether such property are benami transaction is a matter of evidence. So if either party transfers the property to someone or creates any charge/mortgage/encumbrance on it, the other party is likely to suffer loss. And the prima facie evidence is also in favor of both the parties. In view of my findings on the above points, the plaintiff as well as the defendant have made out a prima facie case, the balance of assurance is also in favor of the defendant. And the possibility of irreparable loss is in favor of both the parties, so that in

the above circumstances, Answer Issue no. 1 to 3 are partly given in the partly affirmative, and the final order after issue no. 4 is passed in the interest of justice.

:: ORDER ::

- The present interim injunction application of the plaintiff of Ex.05 is partly allowed.
- Both the parties to the suit are ordered to maintain status quo till the final disposal of the disputed property of the suit.
- No Order as to costs.

Signed and pronounced in open Court today on 23..th October 2024.

Date:23/ 10/2024
Place:-Modasa

(Smt. N. D. Sharma)
Code No.GJ00555
Pri. Sr. Civil Judge, Modasa
Dist. Arvalli