

REGULAR CIVIL SUIT NO.25/2014.ORDER BELOW EXH. 5 APPLICATION

[1] Plaintiff of this case has filed application under Order 39, Rule 1 and 2 and Section 151 of the Code of Civil Procedure, 1908 along with the Plaint and has stated that, as per registered sale deed index no. 1454/2008 dated 13/05/2008, the Plaintiff has purchased suit land revenue survey no. 75 paika Plot no. 8 admeasuring Hectore 0-78-99 Square meter of village-Taluka Meghraj, from one Pandya Sagarbhai Bhupendrakumar. It is the case of the plaintiffs that, since last four days the Defendants have illegally entered in the suit land and started doing construction work of the plinth and also threaten to dare consequences to the Plaintiff. Therefore, plaintiff has filed present suit for permanent injunction restraining defendants from entering in suit land and restraining the Defendants from entering and creating any encroachment in the suit land belongs to the Plaintiff. It is further the case of the plaintiff that, he has filed present application at Exh.5 along with the Plaint for interim protection.

[2] On Service of summons of the suit, defendants have appeared through their Ld. Advocate Mr. S.R. Bhavdar and filed their written statement vide Exh. 13, in which it is inter-alia denied the facts of the plaint as well as injunction application. It is contended in the Written Statement by the Defendants that the suit is barred by non joinder of necessary parties and the the Defendants father Deceased Dahya Ahmedbhai Gafurbhai has executed sale deed in the favour of Mr. Banga Mahomadbhai Kadarbhai who was minor at the time of execution of the sale deed index no. 1451/1996 dated 27/09/1996 of the suit land and on the basis of the same sale deed the sale deed index no. 1839/2005 dated

17/12/2005 of the suit land and on the basis of the same sale deed the sale deed index no. 1454/2008 dated 13/05/2005 of the suit land in favour of Plaintiff was executed hence all the sale transactions are void and Plaintiffs have filed false suit as well as injunction application and contended that they are in possession of suit land as per the say of the Plaintiff herself in the suit as well as in the injunction application and as per the panchnama of the suit land produced at Mark 9/2 and as per the photo produced vide mark 4/9. It was further contended that the suit land was running in the name of the Defendants as per the revenue entry no. 2807 in the village form no.6 dated 24/11/2008 which was confirmed on 12/01/2009. It is further contended that they were granted permission for doing construction in the suit land by Meghraj Grampanchayat as per Resolution no. 38 dated 23/5/2014. Hence requested to reject the application with cost.

[3] In pursuance of the Written Statement filed by the defendants, plaintiff has submitted her Counter Affidavit at Exh. 15, wherein she has denied the facts of the written statements and contended that, the facts stated in the Written Statement of the defendants are not true.

[4] In support of her case plaintiff has produced following documentary evidence produced below Exh. 4 from Mark 4/1 to 4/9.

[5] In support of their case defendants have produced following documentary evidence produced below Exh. 15 from Mark 15/1 to 15/5.

[6] I have gone through the pleadings of the parties. I have also heard the arguments advanced by Ld. Advocate Mr. S.N.Upadhyay, appearing on behalf of the plaintiff and I have also heard the arguments advanced by Ld. Advocate Mr. S.R.Bharvad, appearing on behalf of Defendants.

Ld. Advocate for the Plaintiff has argued that as per the sale deed

she is sole owner and in occupation of the suit land and Defendants are frequently threatening to Plaintiff to grab the suit land illegally and if the Defendants success in their attempt then the Plaintiff will have to face multiplicity of proceedings and the purpose of the filing of the suit will be frustrated. Hence requested to allow the application.

On the other hand Ld. Advocate for Defendants have stated that the Plaintiff made false sale deed and created false documents and they are in possession of the suit land from the time of their ancestors and Plaintiff has failed to prove her possession in suit land And she has executed false sale deed. Therefore, she is not entitle for any relief and hence requested to reject the application with cost.

[7] I have gone through the pleadings of the parties and to decide present application, following points raised for my determination:-

- (1) Whether plaintiff proves that, she has prima facie case ?
- (2) Whether plaintiff proves that, balance of convenience is in favour of the plaintiff ?
- (3) Whether plaintiff proves that, if the injunction as prayed for is not granted in favour of her, she would suffer irreparable loss, which would not be compensated in terms of money ?
- (4) What order ?

[8] For the reasons stated below, I answer above points as under:-

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

-:: REASONS ::-

[9] POINTS NOS.1 TO 3:-

As all the points are inter-connected and hence, for avoiding repetition of facts, in the interest of justice, all the points are discussed

together.

[10] Looking to the facts of the case it is the case of the Plaintiff that she is owner of the suit land and looking to the registered sale deed index no. 1454/2008 dated 13/05/2008 which is produced at Mark 4/3, it is very clear that the suit land is owned by the Plaintiff. Thus, from the documentary evidence produced by the plaintiff, it prima facie establishes that, plaintiff is the owner of the suit land. So far as the real controversy regarding the facts that the Plaintiff has made false sale deed is concerned and looking to the evidence produced by the Defendants more particularly mark 15/5 which is birth certificate of Mr. Mahamad Hanif Kadarbhai dated 4/9/2014 issued by Principal of Meghraj School no. 1 Meghraj and looking to the sale deed index no. 1451/1996 dated 27/09/1996 of the suit land, there are major difference in name i.e. Mr. Mahomad Hanif Kadarbhai and Mahomadbhai Kadarbhai. Hence it does not prima facie appears to be one person as argued by Ld. Advocate for the Defendants. So far as the possessions of the suit land is concerned it appears that the Defendants have stated that they are in possession of the suit land but not produced any evidence to prove that they are in possession of the suit land from the time of their ancestors and on the other side the Plaintiff has also produced sale deed in her name of the suit land.

Thus, the Plaintiff has prima facie proved that she is owner and occupier of the suit land and looking to the case record the Defendants have not produced any evidence to prove the same fact. Therefore, prima facie it establishes that, plaintiff is owner and occupier of the suit land and when the suit land is running in the name of Plaintiff, she has right, title and interest in the said land and therefore, without her consent, defendants have no right to restrain the Plaintiff from peaceful use of her land or to enter or encroach in the same land. Therefore, in the interest of justice and to avoid multiplicity of proceedings Plaintiff is required to be given protection in the suit land and therefore, this court believes that, plaintiff has prima facie case and So far as balance of convenience is concerned, at the time of deciding injunction application, it is required to consider the convenience of the parties. In this case defendants are failed to establish the fact that, plaintiff has no right, title

and interest in the suit land and therefore, if the injunction is granted in favour of the plaintiff, defendants would have not to suffer any inconvenience and if the injunction is not granted in favour of the Plaintiff then it will create multiplicity of proceeding and therefore, I believe that, the balance of convenience is also in favour of the plaintiff. Thus, the sum and substance is that the plaintiff has prima facie case and balance of convenience is also in her favour and thus granting of such an injunction will not cause irreparable injury to the defendants and therefore, I answer all the points accordingly in the affirmative and in the result, I pass following final order:-

∴ ORDER ∴

1) Application filed at Exh.5 by the plaintiff in Regular Civil Suit No. 25/2014 is hereby allowed.

2) Defendants, their agents, servants, assignees, etc. are hereby restrained from entering or creating any encroachment without following due process of law, in the suit land revenue survey no. 75 paika Plot no. 8 admeasuring Hector RE 0-78-99 Square meter of village - Taluka Meghraj, District Arvalli, till the final disposal of the suit.

3) No order as to costs.

Pronounced in the open court on this 12th day of January, 2016.

Place: Meghraj
Date : 12/01/2016

[Kutbuddin Noormohammed Sarvaiya]
Principal Civil Judge,
Meghraj
GJ00966