

Regular Civil Suit No. 183/2020**Order below Exh.- 5****(Plaintiffs' Interim Injunction Application under Order 39,
Rule 1 & 2 of the C.P.C.)**

(1) Read this application, plaint, written statement and objection of the defendants Exh. 17. Perused the documents of both the parties. Heard, Ld. Advocate for the plaintiffs Mr. R. U. Khan and Mr. A. A. Shaikh for the defendants.

(2) This order is passed below Exh. 5. Therefore the contents of the application is not repeated.

(3) Plaintiffs have filed this suit for declaration that they being declared as owner and occupant of the suit property i.e. agricultural land Revenue Survey No. 308 Account No. 275, H. A. M. 0-68-80 of village Bhadi, Taluka Ankleshwar, Dist. Bharuch.

The plaintiffs also prayed for permanent injunction in the plaint Exh. 1.

(4) Along with plaint plaintiffs have produced this application for interim injunction till final disposal of the suit and also prayed for interim injunction against defendants that defendants not to enter in the suit property and also prayed that defendants not to snatch the possession of

(5) To decide the interim injunction application under order 39, Rule 1 & 2 of the C.P.C. this court has to determine the points which are as under;

- 01) Whether the plaintiffs have prima-facie case ?
- 02) Whether the plaintiffs have balance of convenience and hard ship ?
- 03) Whether the plaintiffs get injury which cannot be compensated in the terms of money if interim injunction will not grant ?
- 04) What order ?

(6) My answer for the above points are as under;

- 01) In the Negative.
- 02) In the Negative.
- 03) In the Negative .
- 04) As per final order.

My findings and reasons for the aforesaid points.

(7) The Plaintiffs come with the case that, their name are existence in the Revenue Records. Therefore they are owners and

occupants of the suit property. The plaintiffs admitted that the suit property is ancestral property and was came from their grandfather. It is undisputed fact that, the name of plaintiffs' grandfather is Musakhan Hussainkhan.

(08) It is the case of the defendants that, their grandfather has purchased the suit property in the year of 1955 at the registered sale deed No. 424 which is produced at Mark 18/1.

(09) The plaintiffs have been produced current Revenue Records village Form No. 7 & 12, 8 A of the suit property which are got by the plaintiffs from the Revenue Authority on 05/10/2020. There are plaintiffs and other persons names in the Revenue Record of the suit property. It is the statement of the plaintiffs that the name in the Revenue Record is sufficient to prove an owner and occupier. The plaintiffs relied upon the judgement of Hon'ble Gujarat High Court reported in 2018 (0) AIJEL - HC-240335, Jaswantbhai Dahyabhai Patel Vs. State of Gujarat. The subject matter was before the Hon'ble High Court in the said decision was mutation entry in revenue records on the basis of a registered Will. The mutation entry was canceled by Mamlatdar upon objection raised by other side and against that order the writ petition was filed wherein Hon'ble High Court held that, when there is a registered transaction, entry reflecting the same has to be mutated in the revenue records. The Hon'ble High Court has further held that, mutation entry stands in revenue records only for fiscal purpose. The title related rights and ownership incidents in relation to the property have to be decided after the adjudication by Civil

(10) It is the argument on behalf of plaintiffs that, the defendants have got the copy of sale deed from the Registrar Office and xerox is produced before this court. Therefore the xerox has no evidentiary value. It is also argued that the plaintiffs are owner and occupant of the suit property. Therefore, plaintiffs have prima-facie case, balance of convenience and hardship. If the interim injunction will not grant to the plaintiffs they will suffer irreparable loss that cannot be compensate in the terms of money.

(11) While perusing all the materials on record, it is undisputed fact that the sale deed of the suit property was executed in favour of grand father of the defendants in the year 1955. The defendants have produced the copy of that sale deed which is consider as public document. According to the Provision of Section 90 of the Evidence Act, the document which is more than 30 years old can be presumed that as genuine. While perusing the sale deed Mark 18/1, the owner was Mohamadkhan Kadarkhan who sold the suit property to Musakhan Hussainkhan. It is undisputed fact that Musakhan Hussainkhan is defendants' grandfather. Consider this sale deed Mark 18/1, the owner of the suit property was Mohamadkhan Kadarkhan, who is not the plaintiffs' grandfather. But plaintiffs' grandfather has made the signature in the said sale deed as a witness. The Registrar has endorsed that the plaintiffs' grandfather Mr. Musakhan Hussainkhan, who knows the executor of sale deed Mr. Mohamadkhan Kadarkhan. Therefore if consider that at that

time plaintiffs' grandfather Musakhan Hussainkhan was also an owner of the suit property he has signed the sale deed. The principle of estoppel is also be applicable if the Musakhan Hussainkhan was owner.

(12) While perusing the Revenue records which are produced by the defendants which are since 1961 to 1979 wherein original owners' name was shown. Then defendants' father name was also entered. Then Mark 18/6 shows that in the year 1986-87 Musakhan Hussainkhan and Mohamadkhan Kadarkhan's name are entered in the Revenue Records. But there is no any extract entry produced by the plaintiffs. So the suit property which is purchased by the predecessor of the defendants. The plaintiffs come with the case that, they are owner and occupant of the suit property on the basis of their names in the revenue records.

(13) Herein, more then 30 years old registered sale deed is in favour of defendants, against that only revenue records shows the name of the plaintiff. When there is no other evidence or document, in such circumstances the revenue records entry can be considered. When there is registered sale deed which is more than 30 years old, in such circumstances the registered sale deed would be prevailed. Herein the defendants' grandfather become owner and occupant of the suit property. Defendants have also produced the some revenue paying receipts. The suit property is agricultural land. But the plaintiffs have not produced any revenue paying receipt or any bills of the crops, seeds, sale of the crops or other available prima-faice evidence.

(14) Considering all materials and the facts, plaintiffs have hide many material fact. Before filing the suit defendants have given a notice to the plaintiffs which is produced at Mark 18/8 wherein defendants have specifically stated that, their predecessors have purchased the suit property in the year 1955 and on that basis they are owner and occupant. But plaintiffs have not challenged the said registered sale deed and speak nothing in the plaint. Not only that but after filing written statement, plaintiffs have not denied such fact on counter affidavit.

(15) When the title is in dispute, the plaintiffs must have challenged that sale deed according to Provision of the Specific Reliefs Act. But herein plaintiffs have only prayed for declaration of his ownership and possession and prayed for permanent injunction for protection of possession and interim injunction for protection of the possession.

(17) However, considering all materials plaintiffs failed to prove prima-facie their possession of the suit property. Therefore, also the interim injunction to protection of possession of the plaintiffs cannot be granted.

(18) As discussed above, plaintiffs have failed to prove prima-facie case, balance of convenience, hardship and point No. 3. Hence my answer for point No. 1, 2 & 3 are in negative and I pass the following order for point No. 4,

-:: Final Order ::-

Plaintiffs' this interim injunction application under Order 39, Rule 1 & 2 of C.P.C. Exh. 5 is hereby dismissed with Rs. 2,000/- cost.

Plaintiffs have to pay the cost amount in District Legal Services Authority within one month from the date of declaration of this order.

This order is pronounced in open court on today i. e. 6th January, 2022.

Ankleshwar
Date: 06. 01. 2022

Sd/-
(Jayeshbhai Limbabhai Chovatia)
Principal Sr. Civil Judge,
Ankleshwar, Bharuch.
UIC No. GJ00717

Abhishek