

RCS/8/2013

ORDER

Registration No.: RCS/8/2013  
Filing No.: RCS/8/2013  
Filed On: 14/02/2013  
Registered On : 14/02/2013

**IN THE ADDITIONAL JUDICIAL MAGISTRATE FIRST  
CLASS COURT. AT: VAGRA.  
REGULAR CIVIL SUIT NO. 8 OF 2013.  
RCS/8/2013**

**Plaintiff :**

1. ASHVINBHAI CHANDUBHAI PATEL  
AT. BHERASHAM, TA. VAGRA,  
BHARUCH

**VERSUS**

**Defendant :**

1. MOTIBHAI CHHAGANBHAI VASAVA  
BHAVAI VALI SHERI, AT. BHERASHAM, TA.  
VAGRA,  
BHARUCH
2. THAKORBHAI CHHANDUBHAI VASAVA  
BHAVAI VALI SHERI, AT. BHERASHAM, TA.  
VAGRA, BHARUCH
3. VASHANTBHAI VERAJIBHAI VASAVA  
BHAVAI VALI SHERI, AT. BHERASHAM, TA.  
VAGRA, BHARUCH
4. SHOMABHAI BADHARBHAI VASAVA  
BHAVAI VALI SHERI, AT. BHERASHAM, TA.  
VAGRA, BHARUCH
5. SHURESHBHAI THAKORBHAI VASAVA  
BHAVAI VALI SHERI, AT. BHERASHAM, TA.  
VAGRA, BHARUCH
6. DILIPBHAI THAKORBHAI VASAVA  
BHAVAI VALI SHERI, AT. BHERASHAM, TA.  
VAGRA, BHARUCH
7. KALPESHBHAI MANILAL VASAVA

BHAVAI VALI SHERI, AT. BHERASHAM, TA.  
VAGRA, BHARUCH

8. KIRANBHAI SHOMABHAI VASAVA  
BHAVAI VALI SHERI, AT. BHERASHAM, TA.  
VAGRA, BHARUCH

9. TINO SHOMABHAI VASAVA  
BHAVAI VALI SHERI, AT. BHERASHAM, TA.  
VAGRA, BHARUCH

10. ANIL MANILAL VASAVA  
BHAVAI VALI SHERI, AT. BHERASHAM, TA.  
VAGRA, BHARUCH

Appearance:

LD.AD. SHRI S.I.DOLA..... For Plaintiff 1

LD.AD. SHRI J.H.KADRI..... For Defendant 1

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**ORDER BELOW EXH.-5**

The Plaintiff has filed suit for declaration and permanent injunction on dated 14/02//2013 through his Learned Advocate Shri S.I. Dola and filed this application for seeking relief of interim injunction. On service of process defendants appeared through their learned advocate Shri. J.H.Kadari and filed written statement and reply to this application at Ex.-15 and then heard arguments of learned advocates appearing for both the parties and considered the documents produced by both the parties.

The Plaintiff has filed suit for declaration and permanent injunction and filed this application for seeking relief of interim injunction and averred that the suit property was originally in the name and possession of Jagdish Hirubhai. He transferred this suit property to present plaintiff through his power of attorney holder named Alpesh Jagdishbhai by way of registered sale document. After this transfer the present plaintiff became the owner and possession

holder of the suit property. Amendment in the revenue records in the name of plaintiff is yet to be carried out. After acquiring this property plaintiff is openly enjoying the property along with its possession. The present defendants with intention to snatch away the possession of suit property from the plaintiff are asking a passage way through this property but in reality they do not have any right or claim for such passage way through this property and they have made illegal encroachment over the suit property and threatening to the plaintiff in different ways including to implicate plaintiff in a false atrocity case. and if injunction is not granted to the plaintiff then plaintiff have to suffer irreparable loss which cannot be compensated in terms of money and hence, prayed to grant relief as prayed in Paragraph 5 of this application.

Plaintiff had produced documents at Ex.- 3 i.e. by list Mark- 3/1 and 3/2. The same had been recorded and all documents had been considered at the time of deciding this application.

Defendants on service of process appeared through their learned advocate filed written statement for plaint and interim application at Ex.-15 and contended that the averments of plaint is false and not admitted and unless and until admitted each and every averment of plaintiff is denied and then submitted that the present defendants had filed RCS No. 15/13 against the present plaintiff yet this false suit is filed by the plaintiff and further contended that plaintiff's suit is barred by the principle of estoppel. Defendants are using passage way through this property for a continuous period of 150 years without any interference since the time of their ancestors. In the suit property which is the passage way of defendants, electricity poles and drinking water pipelines were installed by the village panchayat of which no protests or objections were ever made by the plaintiff, but due to sudden rise in the land rates because of proposed GIDC area, the plaintiff's intention and motive have been corrupted. Therefore as passage way through this property for a period of continuous 150

years was never ever objected by the plaintiff, the present suit is liable to be rejected due to bar arising out of principle of estoppel.

Further they contended that present suit property which is the passage way of defendants is the only way to entry and exit in the village. Pippal faliya's inhabitants who are the present defendants in the suit are using this passage way for a continuous period of 150 years without any interference and this is the only way or medium to connect this Pippal faliya with rest of the village. So this being a common public passage way, plaintiff has no right or claim over this property, inspite of this plaintiff has generated false documents claiming ownership over the property using his approach and influence which is liable to be rejected. Defendants have acquired a right of easement by way of prescription over this suit property as they are using it for a period of continuous 150 years without any interference. For this purpose they have filed a suit RCS no. 15/13 against present plaintiff. Defendants further contended that plaintiff has filed present suit and application merely to harass them and therefore prayed for rejection of this application.

Defendants had produced documents at Ex.- 27 i.e. by list Mark- 27/1 to 27/3 and at Ex.- 29 i.e. by list Mark- 29/1 to 29/43. The same had been recorded and all documents had been considered at the time of deciding this application.

At the time of argument The plaintiff's learned advocate has vehemently argued as per the pleadings of plaintiff and further in arguments submitted that plaintiff has purchased this suit property by way of a registered sale document and whenever there is a transfer by way of registered document it is considered as a proof of ownership. While as defendants have not produced any documentary evidence to prove any basis for claim over this suit property or to sustain their claim by way of easement. Plaintiff has a prima facie case and in this regard he has submitted copy of Aakarani Patrak and registered sale

document vide Mark 3/1 & 3/2. So plaintiff is in better title of the suit property whereas defendants have no title, and if defendants are allowed to passage way through suit property then it will cause great and irreparable loss to the plaintiff which cannot be compensated in terms of money. In this regard plaintiff side relied upon judgment mentioned in **1983 G.L.H. 146** in which Hon'ble H.C held that for a prima facie case plaintiff should have legal possession or title to the suit property which could be protected. Along with this they referred the judgment mentioned in **1997 (3) GLR 2383** in which Hon'ble H.C. held that title of property should be considered in favour of person who have documents and trespassers have no right. Hence application should be granted in favour of plaintiff.

Defendants learned advocate submitted as per the contents of the written statement and then referred to the documents produced at Ex. 27 i. e. Mark 27/1 to Mark 27/3 by which they produced affidavits of some people living in the village and well familiar with the geographical conditions and locations village in which they affirmed and sworned on oath that suit property is the only passage way for the defendants to enter or exit for rest of village and defendants are using this way since the time of their ancestors and there is no alternative way except the suit property.

Further he argued that Aakarani Patrak is not evidence for ownership of a property, it is limited only for tax collection and revenue purpose. Sale document was prepared by plaintiff merely on the basis of Aakarani Patrak which is valid or not is still a question of fact and evidence. The sale document prepared by plaintiff itself is illegal. In this regard he relied upon the judgment in the case of **Kantibhai Ishwarbhai patel vs Chandrakant Ishwarbhai patel** wherein the hon'ble H.C. held that it is settled proposition of law that the revenue records have no evidentiary value. They are only for the fiscal purpose and, title to the properties cannot be decided on the basis of the mutation entries effected in the revenue records. and

hence, considering the above arguments and contents of the written statement the application please be rejected.

On the basis of above mentioned averments, produced documentary evidences and keeping into mind the arguments put forwarded by both parties following issues are required to be discussed and determined for judicious disposal of this application-

**Points of determination:**

1. Whether the plaintiff proves that plaintiff have prima facie case in his favour?
2. Whether the Plaintiff proves that Balance of convenience is in his favour ?
3. Whether the plaintiff proves that if interim injunction will be refused plaintiff have to suffer irreparable injury which cannot be compensated in terms of money?
4. What order?

**Findings :**

1. Partly Affirmative
2. Negative
3. Negative
4. As per final order.

As all the points of determination are co-related with each other for the sake of convenience to avoid repetition all points of determinations are hereby discussed jointly.

Plaintiff has produced Aakarani Patrak and registered sale document of suit property in his favour and on these basis asserted his ownership claim over suit property, but as it is very well established proposition of law that revenue records are only for the fiscal purpose and, title to the properties cannot be decided on the basis of the mutation

entries effected in the revenue records. Although sale document produced by the plaintiff is a registered document but it appears to be made on the basis of Aakarani Patrak which as above discussed has no evidentiary value , except this Aakarani Patrak no other documentary evidence is produced before the court as to show the basis of formation of abovementioned sale document.

Further the fact that In the suit property which is the passage way of defendants, electricity poles and drinking water pipelines were installed by the village panchayat of which no protests or objections were ever made by the plaintiff also creates doubt and goes against plaintiff's claim .

Now looking to the above settled principle of law and facts on hand even if it is to be assumed the claim of ownership of plaintiff based on this sale document in his favour, and that the plaintiff is partially successful in proving prima facie case in his favour, he has to prove other ingredients like balance of convenience and irreparable injury in his favour.

Balance of convenience and irreparable injury are also equally important aspects to be considered at the time of deciding application of interim injunction for obtaining temporary injunction, it is necessary for plaintiff to establish that balance of convenience lies in his favour and he would suffer irreparable injury if the injunction is not granted, but after hearing the averments of both parties it appears that from granting of injunction in favour of plaintiff, great hardship and inconvenience is likely to be caused to the defendants as they have no other passage way of entry or exit to the rest of villege except the passage way through the present suit property. In this regard defendants have produced affidavits of some people living in the village and well familiar with the geographical conditions and locations of village in which they affirmed and sworned on oath that suit property is the only passage way for the defendants to enter or exit for rest of village and defendants are using this

way since the time of their ancestors and there is no alternative way except the suit property. Besides it in the RCS no 15/13 which has been filed by the present defendants against the plaintiff over the same suit property, court commissioner was being appointed. His report also shows that the suit property is the only passage way for the inhabitants of Pippal Faliya which are defendants in present suit, except this there is no other alternative passage way for them to enter or exit into rest of village. Court commissioner's report also shows that plaintiff is not in immediate possession of the suit property so as to resist or interfere defendants' free passage way through the suit property. The claim of defendants on the basis of easement by prescription which is a question of facts and evidences can not be decided at this stage, but affidavits produced by the defendants in this regard can be considered in their favour at this stage in support of their claim based upon easement by prescription.

Here it appears that plaintiff is not going to suffer any irreparable loss if injunction is not issued. The party must show a clear necessity for affording immediate protection to his legal right, if any, and lastly the court has to take into consideration the comparative mischief or inconvenience to the parties. Hence as per the law It is the duty of the court to see that the proper case is made out for grant of injunction. Proper apprehension should also be pleaded and proved. But herein this case plaintiff has failed to show the court that above all conditions are fully fulfilled in support of his case.

Now looking to the above settled principle of law and facts on hand even if it is considered that plaintiff has partially proved prima facie case in his favour, it cannot be said at this stage that plaintiff has balance of convenience in his favour or will have to suffer any irreparable injury which cannot be compensated in terms of money if injunction is not granted to him. Rather if injunction in favour of plaintiff be allowed, great hardship and inconvenience is likely to be caused to the defendants as they will not have any other passage way of entry or exit to the rest of villege. So in order to avoid multiplicity of litigation and to protect and

preserve the suit property, as per above discussion and looking to the peculiar facts and circumstances of case and legal position of law in the interest of justice, I pass following order-

**ORDER**

- (1) This application of plaintiff for interim injunction is hereby rejected.
- (2) The parties should maintain status-quo of the suit property as to Title and Possession till the final decision of the suit or further orders.
- (3) No order as to costs.

**Pronounced in open court today on 26th March , 2015.**

**Date: 26.03.2015  
Vagara, Bharuch**

**(Arjun Singh)  
Additonal Civil Judge, Vagara  
Code no. GJ01363**

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