

R.C.S. NO. 35/2019

ORDER BELOW APPLICATION AT EXHIBIT-5

Lr. Advocate for the plaintiffs: Mr. J. H. Kadri.

Lr. Advocate for the defendants: Mr. S. Y. Chowkiwala.

1. The present application is filed by plaintiffs under order-39, rule-1,2 of CPC. It is stated by the plaintiffs that the im-moveable property (house) situated at village: Ankot, Taluka: Vagra, District: Bharuch, being numbered as property no. 36 in Khadki Faliya was owned and possessed by the Ancestor of the plaintiffs late Bakorbhai Kevadbhai and his name was recorded in that capacity in the panchayat records as well. In the said property a temple of the 'Kuldevi' of the plaintiffs is present and the grand father of the plaintiffs took care and worshipped the Goddess. After the demise of the plaintiff's grand father, the father of the plaintiffs Ramanbhai Bakorbhai stepped in as owner and possessor of the property. In the panchayat record also the name of plaintiff's father Raman Bakor and his brother Kalidas Bakor was entered. Therefore, the said property is owned and possessed by plaintiffs since the year 1958 through their ancestors.
2. The plaintiffs owing to his service commitments had to shift from the village and the defendants whose name is formally entered in the record attempted to take disadvantage of this situation filed R.C.S. no. 311/2000 against the father of the plaintiffs. The said suit was dismissed for default of the defendants by the court. The defendants have filed R.C.S. no. 13/2012 against the plaintiffs which is pending for adjudication.
3. It is further stated that the plaintiff is about to reach age of super-annuation and intends of stay at village Ankot and offer his service to

the Goddess (Kuldevi) Temple situated within the property. As the property and the temple are age old the plaintiffs have dismantled the existing structure and was attempting to commence fresh construction over the property. However, defendants who are high handed persons are attempting to create hindrance and interfering the plaintiffs by constantly fighting with the plaintiffs as they want to snatch the suit property from the plaintiffs. It is stated that the plaintiffs are in settled possession of suit property since 1958 and if the defendants succeed in their malafide intention of snatching the property from plaintiffs, the plaintiffs will suffer ir-repairable loss that cannot be compensated in terms of money. Plaintiff has pleaded that all the three necessary ingredients for the purpose of grant of injunction are in their favour.

4. Plaintiff has prayed to pass temporary injunction restraining defendants, their servants-agents from disturbing, creating hindrance-impediment to the plaintiffs while they are carrying construction activity in the property till the final disposal of suit.
5. The summons of the present suit was duly served upon the defendant who appeared through his Advocate Mr. S. Y. Chowkiwala and filed their written statement vide exhibit-22. The defendants have taken preliminary defences about non-joinder of necessary parties, suit barred by limitation. It is the defence of the defendants that the suit property was owned by their ancestor Harisinh and that fact is also entered in the panchayat record. After the demise of the ancestor of the defendants on 25/04/2001 the suit property came to the hands of the defendant's father and their aunt Nayanaben. They filed an application before Ankot Panchayat to enter their name in the panchayat record by way of mutation entry. However, the said application was turned down by the authority due to some political reasons. It is also contended by the defendants that the plaintiff's ancestor was a native of village Ankot used to stay at the suit property by constructing a Kutccha abode for himself and therefore, formally and inadvertently his name was entered in the record as

the possessor of the property. Plaintiff's ancestor and their uncle kalidas Bakor left village Ankot and shifted to Vadodara for earning their livelihood and handed over the possession of suit property to the defendants and since then the property is in possession of defendants. However, the defendant's father being illiterate and ignorant about the legal aspects took no steps to delete the name of plaintiff's ancestor in the panchayat record as the possessor of the suit property. It is specifically contended by the defendants that the suit property is owned and possessed by them and the plaintiffs have no right over the property. Defendants have also stated that their ancestor has filed R.C.S. no. 13/2012 against the father and uncle of defendants and one Himmatsinh Chotu Gohil who is the ex-deputy sarpanch of Ankot seeking prayer to restrain them from entering upon the suit property and carrying any construction activity over it and the said suit is pending for adjudication. Defendants have stated that currently the property is an open land and there is no temple of any of the Goddess in it. Defendants have prayed to reject the suit with cost.

6. Heard Lr. Advocate for the respective sides who have argued as per their pleadings.
7. Perused the application, the record of the suit and heard Lr. Advocate for the respective sides at length. As the plaintiff has sought interim injunction pending the final disposal of the suit it is apposite to discuss general principles of granting and non-granting of the interim injunction application. There are three basic principles for granting or refusing to grant temporary injunction i.e. prima facie case in favour of the party seeking injunction, Balance of convenience in favour of such person and lastly there must be a irreparable loss which are likely to be caused to party if injunction is not granted to such person. Thus, an injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case.

In addition to these three basic principles for granting or refusing to grant injunction, the conduct of the person seeking injunction should also be taken in to consideration because the granting of injunction is an equitable relief and is drastic or serious order and there are two basic maxims of equity which are important to be consider at the time of deciding injunction application which are "He who seeks equity must do equity" and "He who seeks equity must come with clean hands".

8. Applying the settled legal principles to the facts of the present case the plaintiffs have claimed ownership and possessory right over the suit property through their ancestors. Plaintiffs have produced vide mark 3/1 village form no. 8 to show their name in the panchayat record. Perusing the said document it is evident that name of plaintiff's father and his brother Kalidas is shown as possessor of the property and in the owners column the name of Harisinh Dajibhai is mentioned. When the plaintiffs have approached the court with a plea that they are the owners of the suit property they must produce documents that prima-facie indicates the proprietary right of the plaintiffs over the suit property. Further vide mark 3/6 plaintiffs have produced copy of the application filed by them before the panchayat to mutate their name in the panchayat record on account of death of Ramanbhai Bakorbhai. In the said application the property no. is shown as 46-A while in the present suit the disputed property is numbered as 36. The plaintiffs have not given any explanation about the said discrepancy in the property number.
9. It is also worth to note that during the pendency of the present suit, the plaintiffs filed an application vide exhibit-28 praying to carry out the local inspection of the suit property and on allowing the said application by court inspection was carried out the commissioner appointed by court. Perusing the commissioner report on record vide mark 34/5 it is evident that the suit property is open land. If the plaintiff's version that the suit property is in dilapidated state, at least there should be a structure present over the property. Thus, it

appears that plaintiffs have not come with clean hands before the court while seeking discretionary and equitable relief of injunction. It is apposite to re-produce the observation of Hon'ble Supreme Court in the judgment of Maria Margarida Sequeria Fernandes Versus Erasmo Jack De Sequeria(Dead) Through L.Rs. (AIR 2012 SC 1727)

Grant or refusal of an injunction

86 Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant. In order to grant or refuse injunction, the judicial officer or the judge must carefully examine the entire pleadings and documents with utmost care and seriousness.

Therefore, when the plaintiff has grossly failed to show that they have prima-facie case in their favour, there is no need to consider whether the plaintiff would suffer ir-repairable injury or whether the balance of convenience is in favour of plaintiff or not as it is well settled that all the ingredients necessary to pass the order of injunction application must co-exist. Further, Hon'ble Apex court in para-13 of its pronouncement in "Kashi Math Samsthan v. Srimad Sudhindra Thirtha Swamy" reported in AIR 2010 SUPREME COURT 296 held that *"It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to*

grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted”.

1. In view of above reasoning, as the plaintiffs have failed to show prima-facie case in their favour, it would not be just to exercise the discretionary relief of injunction in their favour and therefore following order is passed below the application.

:- Final Order:-

- 1 The present application is hereby rejected.
- 2 Cost of the application shall follow the cost of the suit.

Pronounced and signed in open court today on 04th of May, 2023.

Date:- 04/05/2023

Place:- Vagra.

V. P. Mehta

Addi. Civil Judge, Vagra.

UIC :- GJ01538