

ORDER BELOW APPLICATION AT EXHIBIT-5

Lr. Advocate for the plaintiff: Mr. I. B. Mistry.

Lr. Advocate for defendants: Mr. M. V. Saiyyad.

- 1 Plaintiff has filed present suit for declaration and permanent injunction restraining defendants from interfering with his peaceful possession over the suit properties and restraining defendant from alienating in any manner the suit properties on the strength of his name in the record of rights. Plaintiff has stated that the immoveable property situated at village: Suva of Taluka: Wagra, District: Bharuch bearing block/survey no. 33, village account no. 227, admeasuring 5400=00 square meters was converted to non-agricultural land for residential purpose. That out of the total land, land admeasuring 247.25 meters was purchased by way of registered sale deed no. 305 dated 19/10/2005 for consideration of Rs. 25,000/- and land admeasuring 1377.50 was purchased by way of registered sale deed no. 304 dated 19/10/2005 for consideration of Rs. 1,38,000/-. Both the registered sale deeds are in the name of defendant. It is the say of plaintiff that he has 50% share in both the suit properties as he had paid 50 % of the consideration amount in the presence of erstwhile owner of the suit properties.
- 2 It is also averred by the plaintiffs that though the total consideration in both the sale deeds is shown to be Rs. 1,63,000/-, the actual price of the suit properties was Rs. 9,00,000/- (Rs. Nine Lacs only) and accordingly, plaintiff paid Rs. 4,50,000/- to defendant. It is also stated by plaintiff that defendant undertook that till he repays to the plaintiff Rs. 4,50,000/- the possession of the suit shall lie with the plaintiff and thereby, since the date of registration of the sale deed with respect to suit property the possession of suit property lies with the plaintiff. Plaintiff also executed a formal rent agreement with

one Jasmindersingh Bajindersingh Sindhu. It is also averred in the application that since the price of the suit land has escalated, the defendant is attempting to dispose off the suit property based on his name in the revenue record and also attempted to dispossess plaintiff from the suit property. Defendant issued notice dated 17/09/2021 to the plaintiff suppressing all the material facts. Plaintiff has given his reply to the notice. Plaintiff has also stated that there are all chances that the defendant may alienate the suit property and if the defendant succeeds in doing so, on the strength of his name in revenue record, the plaintiff will have to undergo substantial loss. Plaintiff has also stated that all the ingredients necessary for granting injunction are in his favour.

- 3 Summons of the suit was duly served upon the defendant who appeared through his Advocate Mr. M. V. Saiyyad and filed his written statement vide exhibit-18 wherein the defendant has denied all the material contention and allegations of the plaintiff. It is the say of defendant that by virtue of registered sale deed in his favour he has become absolute owner and possessor of suit property. Defendant has contended that he alone has paid the full consideration amount at the time of purchasing suit property. It is also stated that out of the suit property, 2660.00 square feet area was given as rent to Jasmindersingh Bajirsingh Sindhu and on the death of the said Jasmindersingh, plaintiff in collusion with the son of Jasmindersingh carried out illegal activities like chemical theft from the rented premises and therefore, defendant issued notice to the tenant of the premises and not to the plaintiff, calling upon him to vacate the rented premises. Though, no notice was issued to plaintiff, he gave reply to the notice. It is also stated by the defendant that he has also filed complaint under land grabbing act against plaintiff and Jagjivan alias Rinku. On the injunction application it is stated that the plaintiff wants to continue his illegal activities from the suit land and injunction allowing such illegal activities cannot be granted. Defendant has also stated that the suit

itself is a counter blast to the complaint filed before collector, Bharuch by defendant against plaintiff and Jagjivan under land grabbing act. Defendant has also stated that as the plaintiff has not come with clean hands to file the suit, the application should be rejected with cost.

4 Heard Lr. Advocate for the plaintiff as well as defendant. Lr. Advocate for the plaintiff has argued as per his application. It is also argued that the plaintiff being in possession of suit property, it is settled that he cannot be dispossessed without following due process of law. It is also submitted that if the defendant alienates suit property on the basis of his name in revenue record there are chances of multiplicity of proceedings. It is also submitted that perusing notice at mark 3/11 it is not clear as to who issued the said notice. In the said notice the possession of plaintiff is admitted by defendant. Per Contra Lr. Advocate for the defendant apart from reiterating what is stated in his written statement has further argued that the plaintiff has by way of the present suit tried to challenge the registered sale deed executed in favour of defendant in the year 2005. Therefore, the suit is barred by limitation. The plaintiff has no interest in the suit property and thereby he has no locus standi to file the present suit. It is also submitted that the plaintiff has not joined the original tenant in the present suit. It is also stated that the present suit is filed with malafide intention of grabbing the suit property. It is also submitted that the plaintiff has not produced even prima-facie evidence of his 50 % share in the suit property. Lastly, the Lr. Advocate has prayed to reject the application with cost.

5 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 an irreparable loss which is 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 into consideration because the granting of injunction is an equitable relief and is a drastic or serious order and there are two basic maxims of equity which are important to be considered 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".

6) Applying the above settled legal principles to the facts of the present case, the plaintiff has challenged a registered sale deed with respect to suit properties executed in favour of defendant way back in the year 2005 precisely on 19/10/2005 i.e. before about 16 years of the filing of the suit. The primary contention of the plaintiff is that he paid 50 % of the consideration amount at the time of sale transaction. Perusing the said Registered Sale Deed which has been produced by way of Mark 3/8 and 3/9 by the plaintiff. From the perusal of these documents, it is evident that the vendor of the suit property had accepted in the document that he has received the full consideration amount from the vendee i.e., the defendant herein. Therefore, when the defendant has acquired his right by virtue of registered instrument, no impediment in the form of injunction can be put against the defendant who is the registered owner of the suit properties and his right over the suit properties which flows from registered instrument cannot be robbed off. When there is a registered document in favour of a party, it has to be believed as genuine. I have to my benefit judgment rendered by Hon'ble Supreme Court in the case of Rattan Singh, Inder Pal Singh

v/s Nirmal Gill (Civil Appeal no. 3681/2020) wherein Hon'ble court held as under:

(32) The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in Prem Singh and Ors. v. Birbal and Ors., (2006) 5 SCC 353.

In view of the judgment cited above there is a presumption of genuineness when the document is registered.

6) As narrated in the general principles governing the grant or non-grant of interim injunction application, apart from other factors delay and conduct on the part of the party who seeks such equitable relief also needs to be looked into. As noted above, plaintiff has challenged the sale deed which is executed before 16 years of the filing of the suit. On the aspect of conduct of the parties seeking equitable relief of injunction, Hon'ble Apex Court in the case of Kishorsinh Ratansinh Jadeja v/s Maruti Corp. reported in 2009(5) SCALE 229 held as under:

(25.) The question of conduct of the Respondent No.1 also becomes relevant, inasmuch as, having slept over its rights for more than 19 years, it will be inequitable on its prayer to restrain the owners of the property from dealing with the same, having particular regard to the fact that a large portion of the land has already been conveyed to as many as 280 purchasers who are in the process of erecting constructions thereupon.

It is also pertinent to note the judgment of Hon'ble Supreme court in the case of Mandali Ranganna v/s T. Ramachandra reported in AIR 2008 SC 2291. Relevant para of the said judgment is as under:

(18.) While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.

Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of

the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.

7. Further, plaintiff has produced at mark 3/11 notice issued by defendant to Jasvindersingh who was the tenant in the suit properties. Perusing the said notice, it is evident that it was issued to the tenant of the suit properties. Nowhere in the said notice it is reflected that the copy of the notice was also served on the plaintiff. Still the plaintiff gave reply to the said notice which is produced vide mark 3/12. Plaintiff is silent about the fact that when the notice was not issued to the plaintiff, what was the reason for the plaintiff to give his reply to the notice. Therefore, it appears that plaintiff has not come to the court disclosing all the material facts before the court.

8. In addition to it, perusing document at mark 3/10 which is a copy of the FIR registered against the plaintiff and others, before, Dahej Police station under section 413,407,285,286,120-B of Indian Penal Code. Perusing the said document, it transpires that the said FIR was lodged against the plaintiff and others as they were carrying out illegal activity of Chemical theft from the part of suit premises. Therefore, when the plaintiff's name has come forth in such activity, no protection in the form of injunction can be granted protecting the plaintiff's alleged possession over suit property.

9. Plaintiff has stated that he has apprehension that if defendant alienates the suit property in favour of third party or creates charge over the property, then there are chances of multiplicity of proceedings as the plaintiff would have to join the new purchaser in the suit. However, in view of section 52 of Transfer of Property Act there is a bar in creating third party rights over a property with respect to which a litigation is pending. Therefore, such apprehension on the part of the plaintiff is also misplaced.

1) In view of above facts and legal position, Prima-facie the title acquired by defendant before 16 years is to be believed and it would be highly inconvenient for defendant if any restrictions are put on

his right as registered owner of suit properties and would be unjust to restrain defendant in exercising his right as rightful owner and possessor of suit property. Apart from it, the conduct of the plaintiff while seeking the equitable relief of injunction also dis-entitles him from obtaining such relief. In view of the above reasons and legal position none of the ingredients necessary to grant injunction are in favour of the plaintiff. Hence, I pass following order under 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 19th of December, 2022.

Date:- 19/12/2022

Place:- Vagra.

(V. P. Mehta)
Addtional. Civil Judge,
Vagra.
UIC :- GJ01538