
**Order Below Application of Interim Injunction filed as per
Order 39 Rule (1, 2) and Section 151 of C.P.C. vide Exh.5**

-----**APPEARANCE:**-----

For **Plaintiff** : Ld. Adv. **Mr. S. I. Dola**
For **Defendant nos. 1 & 2** : Ld. Adv. **Mr. M. Y. Patel**

(1) Brief Facts of The Suit :

- 1** The plaintiff has filed the present interim injunction application for property bearing Serial No. 110 and Property No. 109 situated in the midst of the residential area of village Bhersam, Taluka Vagra, District Bharuch.

Four directions of the property :

North : Open space

South : Entrance (door) of our house

East : A road passing through the courtyard

West : Open space

(Hereinafter the above mentioned property shall be referred to as “*Suit Property*”)

- 2** It is stated that the the plaintiff are the owners and the suit property is his ancestral property. The property is recorded in the plaintiff's name in the Panchayat records and he pays the taxes thereof. Furthermore, it is stated that on the eastern side of the suit property, plaintiff has courtyard through which a road passes, and while doing agricultural work, plaintiff keeps his agricultural implements there and also keep buffaloes and the like. Thereafter, the Sarpanch had sold the gauchar (grazing) land, and an application was

made against her in that regard, on which the plaintiff duly signed. Due to the said reason, false and baseless notices regarding alleged encroachment are being issued to the plaintiff.

- 3 Further, even-though the Panchayat Sarpanch is a woman, the signatures in her name are made by her husband, and the affairs are being handled by Defendant No. 3, and at his instance false notices are being issued. The suit property is in the plaintiff's ownership and possession, and no encroachment has been made. The defendants have not prepared any map nor passed any resolution regarding the alleged encroachment. False notices dated 09/08/2024 and 23/08/2024 were issued, and therefore, the plaintiff replied to the notice regarding encroachment on 31/08/2024. The intention of the defendants is to cause damage to the suit property, and they have no authority to do so. The alleged encroachment shown on the western side of the suit property is falsely shown and notices have been issued on that basis.
- 4 Therefore, if the defendants succeed in their mala fide intentions, the plaintiffs are likely to suffer irreparable loss, which cannot be compensated in terms of money. Therefore, the present application is filed for obtaining an interim injunction.
- 5 The reliefs which have been sought by the plaintiffs from this Court are as under ;
 1. To grant an order for restraining the defendants from obstructing or causing obstruction to plaintiff's use and enjoyment of the suit property on the western side and

from carrying out or causing any demolition or interference during the pendency of the proceedings.

2. To award the entire costs of the present suit from the defendants.
3. That this Honourable Court grant any other relief deems just, proper, and appropriate in favour of the plaintiff.

(2) Case Proceedings :

- 1 The notice was issued by the Court and it was duly served to the defendants. The defendants has appeared through an Advocate and filed their Written-Statement vide Exh.13.

(3) Written Statement by The Defendants :

- 1 On service of notice, the defendants had appeared through Advocate. Defendant nos. 1 to 2 have filed their written-statement vide Exh.13. The Ld. Adv. for the defendants submits that the plaintiff's suit and injunction application in the present form is liable to be dismissed and further, the plaintiff has not approached this Hon'ble Court with clean hands and also the plaintiff has not joined the necessary parties as parties to the suit. The plaintiff has distorted the true facts and, on the basis of fabricated and distorted facts, declared false facts on oath, therefore, the defendants reserve their right to file a complaint for perjury on account of false affidavit. The plaintiff has not affixed the proper and requisite amount of court-fee stamp on the plaint. The plaintiff has filed the suit without any valid cause of action; as per Order II Rule 2 of the Code of Civil Procedure. Furthermore, Before filing a suit against the Gram

Panchayat or any Government or semi-Government office, notice is required to be given, However, the present plaintiff has filed the present suit against the defendants, without issuing any such notice, and therefore the suit is liable to be dismissed at the threshold. The defendants specifically deny all allegations made in the plaint except those expressly admitted in their written statement.

- 2 It is stated that Defendant No. 1, is discharging duties in the office of the elected Sarpanch of Bhersam and Juned Group Gram Panchayat, and Defendant No. 2 has been appointed by the Government of Gujarat as Talati-cum-Mantri in Bhersam and Juned Group Gram Panchayat and has been performing duties as Talati-cum-Mantri for the last three years. The defendants have denied the allegation of the plaintiff that the Sarpanch has sold gauchar (grazing) land and that the plaintiff had signed an application made by villagers, due to which pressure is being exerted upon him by issuing false notices and that the Sarpanch is a woman and that her husband and Defendant No. 3 are running the affairs of the Panchayat. Further, against the allegations made in the para-1 of the plaint, the defendants have stated that the villagers of Bhersam repeatedly raised suggestions and objections in the Gram Sabha stating that due to encroachments on village roads and public places, the roads had become narrow, and that dumping of garbage near public places and the community hall posed a risk to the health of school-going children. Therefore, resolutions were passed in the Gram Sabha meetings held on 29/02/2024 and 02/10/2024 for removal of encroachments

and for opening village roads. Thereafter, on 25/06/2024, an application was submitted by villagers addressed to the Sarpanch/Talati-cum-Mantri for removal of encroachments, garbage heaps, and filth. Pursuant to the representations made in the Gram Sabha and the application submitted by villagers, resolutions were also passed in the general meetings of the Gram Panchayat held on 05/03/2024 and 28/06/2024. As per the powers and authority vested in the Panchayat u/s 104 and 105 of the Gujarat Panchayat Act, 1993, authority was granted to the Sarpanch of Bhersam Gram Panchayat to remove encroachments in the village, and accordingly notices were issued to the plaintiff and other encroachers in the village. The plaintiff, despite having completed full construction on his property, he still has constructed a cattle shed by encroaching upon Panchayat land situated near his house and has tied buffaloes there and dumps garbage, thereby creating filth. Further, in front of his house there is a public road, a community hall, and construction of a school is underway, due to which children are required to sit in the community hall for studies. Therefore, arrangements for toilets and drinking water are required to be made on Panchayat land near the community hall. Despite informing the plaintiff, he parks his tractor, trailer, agricultural implements, four-wheeler vehicle, and tempo near the community hall, causing severe inconvenience to school children. As a result, the Panchayat is unable to carry out construction work necessary for the welfare of children and villagers. Therefore, in the above circumstances, as per the

resolutions passed in the Gram Sabha and general meetings for removal of encroachments, garbage, and filth, authority & powers were granted to the Sarpanch, and accordingly notices were served upon the plaintiff and other encroachers in the village. The plaintiff was asked to produce necessary proof if he claims to have constructed a cattle shed on his property or to have placed agricultural implements on his own land. However, the plaintiff has neither produced such proof nor annexed any such proof with the plaint.

- 3 In view of the above facts, the plaintiff has filed the suit the defendants, on false grounds. In reality, none of the reasons stated by the plaintiff have arisen against the defendants. Therefore, the Ld. Adv. for the defendants respectfully submits that the plaintiff is not entitled to obtain the reliefs sought in the plaint and it deserves to be dismissed with costs.

(4) Further arguments :

The learned advocate for the plaintiff has argued as per application for temporary injunction and submitted his further arguments vide Exh.18, which is part and parcel of the order and to avoid repetition of facts, this court do not reiterate it as a whole.

(5) Issues :

- (1) Whether the plaintiff proves that he has a has prima facie case ?
- (2) Whether the plaintiff proves that balance of convenience is his favour ?

- (3) Whether plaintiff proves that he will suffers irreparable loss and injury, if temporary injunction is not granted in favour of plaintiff ?
- (4) What order and relief ?
- (5.1) My findings on the above issues are as under :
 - (i) In **Negative**
 - (ii) In **Negative**
 - (iii) In **Negative**
 - (iv) As per the **Final Order**.

(6) **Findings of The Court :**

- 1 Read the application as well as perused the records of the suit along with the documents filed by the plaintiff vide mark 3/1 to 3/14. As the plaintiff has sought injunction orders with respect to the suit property during the pendency 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 are likely to be caused to party if injunction is not granted to such person. Thus, an injunction being an equitable relief and 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 party 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 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".

- 2 Keeping in mind the above settled legal position and considering the same in light of the facts of the present case, the plaintiff has failed to establish a prima facie case in his favour. Though the plaintiff claims ownership and possession over the suit property, he has not produced any cogent documentary evidence such as a sanctioned map, measurement, or demarcation to show that the disputed portion, in respect of which injunction is sought, forms part of his private property. Furthermore, when looking to the document produced vide mark 3/1 to 3/14, it seems that the plaintiff has produced various documents relating to assessment of the property bearing property no. 109, tax paid on the said property & notices sent by defendant no. 1 regarding illegal encroachment done by the plaintiff. But when looking to the contents of the notice, it appears that the defendant no. 1 had sent notices dated 09/08/2024 & 23/08/2024, not regarding the private property of the plaintiff bearing property no. 109, but instead it was sent regarding the Panchayat land situated near his private property and even-though the plaintiff was given repeated notices about the illegal encroachment, he still tied

buffaloes there and dumps garbage and as a result of that resolutions in exercise of statutory powers under the Gujarat Panchayat Act, 1993 were passed in the Gram Sabha and general meetings for removal of encroachments, garbage, and filth, authority & powers were granted to the Sarpanch. Prima facie, it appears that the plaintiff is seeking protection over land which is alleged to be government / Panchayat land, and it is settled law that no injunction can be granted to protect an encroachment on public property.

- 3 Furthermore, The plaintiff has failed to prove that the balance of convenience lies in his favour. Granting interim injunction would restrain the defendants, who are public authorities, from discharging their statutory duties relating to removal of encroachments, sanitation, and maintenance of public roads and public utility areas. Such restraint would adversely affect public interest, including the convenience and safety of villagers and school-going children. On the other hand, refusal of injunction would not cause any undue hardship to the plaintiff, particularly when he has failed to establish a lawful right over the disputed land. The plaintiff has not proved that he would suffer any irreparable loss or injury if the temporary injunction is not granted. Any loss alleged by the plaintiff is neither irreparable nor beyond compensation in accordance with law. Moreover, removal of an alleged encroachment on government or Panchayat land pursuant to lawful authority cannot be construed as causing irreparable injury. Conversely, granting injunction would result in irreparable

harm to public interest and would obstruct lawful administrative action.

- 4 In view of above discussions this court is firmly of the opinion that the plaintiff has failed to prove that they have prima-facie case. Plaintiffs are also failed to prove that balance of convenience is in their favour and also failed to prove that if relief of temporary injunction will not be granted then they will suffer an irreparable loss, Thus plaintiffs are not entitled to equitable remedy of temporary injunction. So, in view of the aforesaid reasons and discussion, I answer the issue nos. 1 to 3 in '**Negative**' and for the issue no. 4, I hereby pass following final order in the interest of justice.

ORDER

- I) The application filed by the plaintiff for interim injunction as per Order 39 Rule(1, 2) vide Exhibit-5 is hereby rejected.
- II) No order as to costs.

Signed & pronounced in open Court today, on 7th February, 2026.

Date : 07.02.2026

Place : Vagra

(Mr. R. C. Sodhaparmar)
Principal Senior Civil Judge,
Vagra
UIC : GJ01158