

**REGULAR CIVIL SUIT NO. 107 of 2014**

**ORDER BELOW EXH.5 :-**

- (1) The plaintiff has preferred an ad-interim application under Order-39, Rule (1) and (2) and Section 151 of the Civil Procedure Code to obtain relief as prayed in para (10) of the interim injunction application filed by the plaintiff. The brief facts of the plaintiff's case are that The suit properties are situated at Jambusar. The area and four boundaries of the properties is mentioned in para-1 of this application. The original number of the suit property was City survey no.1046 and the area was 1053.52 square meter. The original owner of the suit property was plaintiff, grandfather of defendants- Rasulbhai Chhitanbhai and Allarkha Gulam Mahommad. The suit property was orally divided between the above three persons on 12/12/69. Property of City survey no.1046/1, 1046/7, 1046/8 and 1046/10 had fallen in share of Rasulbhai Chhitanbhai. Rasulbhai had passed away on 17/11/1961. Names of his legal heirs Machhubhai, Mehmudbhai, Kadarbhai and Rehmanbhai were entered in the suit property. Other two properties of City survey no.5495 and 5546 and 1046 was also divided between the plaintiff and other legal heirs of Abbas Rasul on 29/12/69. The upper portion of City survey no.5495 and 5564 went to Machhu

Rasul. The ground floor went to Rehman Rasul and ground floor of City survey no.1046 went to Abbas Rasul. Upper portion of City survey no.1046 went to Mehmood Rasubhai. The middle portion of City survey no.1046 went to Kadarbhai Rasulbhai. Kadarbhai is no more. He had no children. The property of City survey no.1046 was divided into six parts. As per the division; the properties are given to the parties. The defendant no.4-Sikandar Mahmood had sold his share of the suit property to the plaintiff in 1994. The plaintiff had built a room on open space of City survey no.1046/1. It was entered in name of the plaintiff. The defendant no. 1, 2 and 6 had removed plaintiff's name from the property card of City survey no.1046/9 and 1046/10. The plaintiff had filed CTS Appeal before the Deputy Collector; which was allowed. Thereafter, plaintiff and defendant no. 1 to 5's names are entered in the suit property. The defendant no.1 had filed a Caveat on 26/8/13. He had started construction in the suit property. When the plaintiff had approached him, he had assured the plaintiff that he will keep half space open for the plaintiff to construct. The defendant no.6 had filed Caveat on 23/6/14. He has not joined other legal heirs of Abbas Rasul Malek. The defendant had threatened the plaintiff to construct in the suit property.

- (2)** The plaintiff has prayed for temporary injunction in his favor as per para 10 of this application. The notice was issued to

the defendants, which was duly served upon them. The defendant no.1, 2, 4 and 5 have appeared through their Ld. Advocate Mr.M.G. Malek and defendant no.6 has appeared through Id. Advocate Mr. Y.F. Shaikh. Despite of ample opportunities to file reply was provided to the defendants, they did not file reply to the suit or present application. Therefore, their right to file reply was closed on 29/9/16.

**(3)** The following issues arise for the determination of the present application :

1. Whether the plaintiff has prima-facie case?
2. Whether the balance of convenience is in favor of plaintiff?
3. Whether the plaintiff proves that if the injunction is not granted in his favor then he will suffer irreparable loss which cannot be compensated in terms of money?
4. What order?

**(4)** My findings for the afore stated issues are as follows :

1. Partly in affirmative.
2. Partly in affirmative.
3. Partly in affirmative.

4. As per final order.

## **REASONS**

### **(5) Issue no. 1 to 3 :-**

**5.1** As the above mentioned issues are interlinked with each other, to avoid repetition and for the sake of convenience, I discuss them simultaneously. I have perused the documents on record. Heard learned advocates for both the parties to the suit.

**5.2** The present plaintiff has produced documentary evidences to show his prima-facie case vide Mark 3/1 to 3/9. The Court commissioner has filed his report vide Exh.-24. From perusal of the documents on record, it is clear that the suit properties are entered in names of the plaintiff and defendants jointly. The suit parties to the suit are residing in proximity to each other. The defendants have not filed any reply to the present suit. They have also not produced any documents to disprove the facts averred by the plaintiff.

**5.3** It is settled law that the grant of temporary injunction is discretionary relief. In order to enable a party to obtain temporary injunction he has to satisfy the following three conditions; first, there is prima facie case of the plaintiff, i.e. there is an important question to be tried in the suit and that on facts before the court there is probability of his being successful in grant of relief asked for by him. Secondly, the court's interference is necessary to

protect him from irreparable injury and thirdly that the comparative inconvenience which is likely to ensue from withholding the injunction will be greater than that which is likely to arise from granting it.

**5.4** I am of the view that there is a fair triable issue between the parties to the suit which can be decided only after recording of evidence. At the same time until the final decision of the suit, the rights of the plaintiff needs to be protected. For the above stated reasons my reply for Issue no. 1, 2 and 3 is partly in affirmative and for Issue no. 4, I order as follows in the interest of justice:

**: O R D E R :**

- 1.** The plaintiffs' application is partly allowed. The parties to the suit are directed to maintain the status-quo of disputed property mentioned in paragraph-1 of the application until final disposal of the present suit.
- 2.** Cost shall follow the final judgment of the suit.

Pronounced in the open Court today on the 16th day of September, 2021.

Date :16/09/2021.  
Jambusar.

(Sheetal Venkateson Mudaliar)  
Additional Civil Judge, Jambusar  
Code no. GJ01217.

