

ORDER BELOW EXHIBIT - 33

1. The defendants have filed the present counter injunction application against the plaintiff. The defendants state that they are the owners and possessors of the suit property. The suit was originally owned and possessed by Ambalal Shankar and he did not sell the suit property to any person and no compromise was done in the Lok Adalat. The defendants state that they are the owners and possessors of the suit property whereas the plaintiff is trying to construct over the suit property by obtaining the possession unlawfully from the defendants. Therefore, the defendants have filed the present counter injunction application and has prayed to restrain the plaintiff from obtaining the possession and from constructing upon the suit property till the final decision of the suit.
2. The plaintiff has submitted his reply vide Exhibit - 36 which have recorded and considered while deciding the present application. The plaintiff has denied the averments of the defendants in their application and stated the facts as mentioned by the plaintiff in his injunction application at Exhibit - 5. The plaintiff states that the suit property was purchased by him from the deceased Sh. Ambalal Shankar in 1983 on the condition to get the registered deed in favour of the plaintiff on payment of whole amount of sale and since then, the plaintiff is in possession of the suit property. The plaintiff states that no written agreement was executed between them for executing the registered sale deed in favour of plaintiff after the payment of whole amount of sale. Thereafter, the suit property was sold by Ambalal Shankar to the defendant number - 2

without executing any sale deed in favour of the plaintiff and then, the plaintiff filed the Regular Civil Suit No. - 278/86 against them, wherein, the compromise was arrived at between the parties in said suit in the Lok Adalat on 08/10/1990 and it was agreed to cancel the agreement of sale executed by Ambalal Shankar in favour of the defendant number - 2 and get the registered sale deed in favour of the plaintiff. The plaintiff further states that the defendant number - 2 has executed an agreement in favour of the plaintiff for the suit property on 10/12/1986 which has been signed by the defendant number - 2 in the presence of witnesses. The defendant number - 1/1 to 1/4 are the legal heirs of Ambalal Shankar.

3. The learned advocates for the parties submitted oral arguments before the Court which have been considered while deciding the present application.
4. On the basis of the pleadings of the parties, record of the suit and arguments of both the learned advocates for the parties, following points of determinations are required to be answered to decide the present application:
 1. Whether the defendants are entitled to get the relief as prayed for in the injunction application?
 2. What is the order?
6. On the basis of the issues framed above, my findings on the above issues are as follows:
 1. In Negative;
 2. As per final order.

-:REASONS:-

Issue No. - 1:-

7. As far as the question of granting interim relief is concerned, three things are to be kept in mind while granting interim relief that, from the pleadings and documents on record, whether the plaintiff shows his prima-facie case, whether balance of convenience lies in his favour and if the injunction is not granted to the plaintiff, whether the same will cause irreparable loss to the plaintiff which cannot be compensated in terms of money.

8. In the present case, the defendant has submitted the counter injunction application against the plaintiff and has sought the relief against the plaintiff in present counter injunction application. The learned advocate for the defendant has contended that the suit property is owned and possessed by the defendants and the plaintiff has no right and share in the suit property whereas the learned advocate for the plaintiff has denied the same stating that the suit property was purchased by the plaintiff in the year 1983 from the father of the defendant number - 1/1 to 1/4, hence, the plaintiff is the owner and possessor of the suit property. The contention of the learned advocates for the parties to ownership cannot be decided at this stage as the question of ownership can be decided only after adducing of evidence by both the parties.

9. The defendant has come forward with the contention that he is in possession of the suit property as per the revenue records submitted

by the plaintiff vide Mark - 3/1 to 3/3 whereas the plaintiff has referred to the compromise decree in RCS No. - 218/86 submitted at Mark - 3/5 and stated that the suit property was to be transferred by executing the sale deed in favour of the plaintiff as per the deed at Mark - 3/5. In such circumstances, the Court is of the view that the question as to possession cannot be said to be proved in favour of the defendants.

10. Further, there are questions which require determination on merits that can be decided by submitting of evidence by the parties while deciding the final suit. Further, while deciding the counter injunction application of the defendant, the Court does not find that the defendant has any prima facie case in his favour for the purpose of deciding the present application. Hence, the Court is of the view that it would be unjust to grant counter injunction application in favour of the defendant when the defendant has not submitted any evidence for the perusal of the Court.

11. Therefore, on the basis of factual and legal aspects and from the record of the suit, the defendant has not been able to prove his case. Hence, on the basis of insufficiency of evidence and in the interest of justice, it would be improper and would defeat the interest of justice if the present counter injunction application is granted in favour of the defendant without any supporting evidence.

12. In such circumstances, looking to the record of the present suit and on the basis of above discussion, the issue number - 1 is answered in negative and following order is passed for issue number - 2 in the interest of justice:

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ORDER

1. The present application is hereby rejected.
2. The parties shall bear their own cost.

Pronounced in open court today on this 12th of April, 2016.

**Date: 12/04/2016
Place: Jambusar**

**(Deepesh Mittal)
4th Additional Civil Judge,
Jambusar, Bharuch
GJ01379**