

Registration No.: RCS/149/2011

Filing No.: RCS/149/2011

Filed On: 25/11/2011

Registered On: 25/11/2011

**IN THE COURT OF 4TH ADDITIONAL CIVIL JUDGE,
JAMBUSAR, DISTRICT - BHARUCH
REGULAR CIVIL SUIT NO. - 149 OF 2011**

PLAINTIFF:

1. MATHURBHAI MANGALBHAI THAKOR
Versus

DEFENDANTS:

1. LEGAL HEIRS OF AMBALAL SHANKARBHAI THAKAR
 - 1/1 TARABEN AMBALAL SHANKAR
 - 1/2 BHAGWATIPRASAD AMBALAL THAKAR
 - 1/3 NIRMALABEN AMBALAL SHANKAR
 - 1/4 NAYANABEN AMBALAL SHANKAR
2. RAJUBHAI CHOTABHAI PATEL

Appearance:

Ld. Adv. Mr. N. H. Patel for the Plaintiff

Ld. Adv. Mr. M. I. Dola for the Defendants

ORDER BELOW EXHIBIT - 5

1. The plaintiff has filed the present application seeking temporary injunction against the defendants. The facts in brief of the present application are as follows:

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.

The plaintiff further states that he is cultivating upon the suit property and has also been in possession of the suit property since 1983 whereas the defendants are trying to dispossess the plaintiff and the defendant number - 1/1 to 1/4 have denied to execute the registered sale deed in favour of the plaintiff as per the compromise whereas the defendants are trying to convey the suit property to any other person. Therefore, the plaintiff has

prayed to restrain the defendants from dispossessing him from the suit property and to restrain the defendants from conveying the suit property to any person till the final decision of the suit.

2. The plaintiff has submitted the documents at Exhibit - 3 and 37 which have been recorded and considered while deciding the present application.
3. On service of notice, the defendants appeared through their learned advocate and submitted their reply vide Exhibit - 28. The defendants contended that the averments in the plaint are false and not admitted; the plaintiffs have filed the false suit and application for interim injunction against the defendants.

The defendants have stated that Sh. Ambalal Shankar was the original owner and possessor of the suit property and he did not sell the suit property to any person. The defendants stated that they are the possessors of the suit property and have been cultivating upon the suit property, the taxes are paid by them whereas the plaintiff has no interest in the suit property. Therefore, the defendants have prayed to reject the present application of the plaintiff with costs.

4. The learned advocate for the plaintiff has submitted written arguments vide Exhibit - 38 and the learned advocate for the defendants has submitted written arguments vide Exhibit - 39 which have been considered while deciding the present application.
5. 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 plaintiffs 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 plaintiff has sought the relief of temporary injunction on the ground that the suit property was sold to him by the original owner Sh. Ambalal Shankar in the year 1983 and since then, he has been in possession of the suit property. The learned advocate for the plaintiff has contended that the revenue records submitted at Mark - 3/1 to 3/4 mention the name of the legal heirs of

defendant number - 1 but the revenue record is not the proof of ownership and is prepared for the purpose of showing the possession over the property as the provision of Land Revenue Code. Further, the learned advocate for the plaintiff has contended that the panchnama of the Court Commissioner submitted at Mark - 3/8 shows the possession of the plaintiff upon the suit property but the contention of the learned advocate for the plaintiff regarding proof of possession cannot be accepted as the panchnama submitted at Mark - 3/8 was done by the Court Commissioner in the 1986 which does not show the current possession of the plaintiff over the suit property. Further, the contention of the plaintiff that the suit property was sold by the defendant through an agreement and he is the owner of the property, such an argument cannot be tenable at this stage as the question as to ownership of the suit property can be decided by adducing of evidence by the parties.

9. The learned advocate for the plaintiff has referred to the documents at Exhibit - 37 and stated that the plaintiff is in possession of the suit property since 1983 and the documents submitted at Exhibit - 37 shows him to be the possessor over the suit property. On perusal of the village sample number - 8 at Mark - 37/1 and 37/2, the same are pertaining to the year 2002-03 whereas the plaintiff has contended that he is current possessor of the suit property. Hence, the contention of the plaintiff that such documents prove his current possession is unacceptable. Further, the learned advocate for the plaintiff has contended that the plaintiff is in continuous possession over the suit property but the record of the suit does not mention any evidence which proves that the plaintiff is in continuous possession of the suit property.

10. Further, the learned advocate for the plaintiff has contended that the plaintiff the electricity connection for the bore was taken by the plaintiff and the plaintiff is paying the bills of electricity over the suit property which proves the possession of the plaintiff over the suit property but such contention of the learned advocates for the plaintiff cannot be tenable as the electricity bill submitted at Mark - 37/23 does not mention the name of the plaintiff and further, copy of receipt of bill does not prove his possession over the suit property.

11. Further, the learned advocate for the plaintiff has contended the suit property was sold to the plaintiff and the plaintiff has paid the whole amount of sale and the defendants were supposed to execute the sale deed in favour of the plaintiff as per the compromise held between the parties in the year 1990. The learned advocate for the plaintiff has referred to the copy of decree at Mark - 3/5 which shows the compromise arrived at between the father of the defendant number - 1/1 to 1/4, 2 and the plaintiff wherein it has been agreed to execute the deed of the suit property in favour of the plaintiff. The learned advocate for the plaintiff has contended that the plaintiff is the owner and possessor of the suit property since 1983. Such a contention of the learned advocate for the plaintiff cannot be accepted as the plaintiff filed the present application on the ground of sale made in the year 1983 and the compromise arrived at in the year 1990. The plaintiff, instead of filing of the execution petition within the period of limitation, has filed the present suit and application for execution of the compromise deed which cannot be accepted. The present injunction application cannot be the means for execution of the compromise deed which was arrived at in the year 1990. In such circumstances, the Court does not agree with the view of the plaintiff

that he has filed the present application against the defendants for execution of the compromise deed of the year 1990 as the plaintiff failed to file the execution petition within the period of limitation.

12. Further, the plaintiff has stated that he is in possession of the suit property and hence, his possession should be protected. But, from the aforesaid discussion and from the record of the suit, the plaintiff has not submitted any document to prove his current possession over the suit property which could be protected. The plaintiff has not got any panchnama of the suit property done to prove their current possession over the suit property.

13. Further, the learned advocate for the plaintiff has stated that the plaintiff has right and share in the suit property and therefore, relief should be granted to the plaintiffs but such an argument by the learned advocate for the plaintiffs cannot be tenable at this stage as the question as to share of the plaintiffs upon the suit property can be decided only by adducing of evidence by both the parties. Further, the present application lacks evidences to grant the relief of present application which can be decided only after adducing of evidence by both the parties.

14. The settled proposition of law in granting or withholding an injunction is that the Courts exercise a judicial discretion and weigh the amount of substantial mischief done or threatened to the party seeking injunction. But as per law, discretion when applied by a court of law means discretion guided by law. It must be governed by rule and not by humour. It must not be arbitrary, vague and fanciful but legal and

regular. Hence, as per the law, it is the duty of the trial court to see that the proper case is made out for grant of injunction. Proper apprehension should also be pleaded and proved. But herein this case plaintiff has failed to show the court that above all conditions are fully fulfilled in support his case.

15. Therefore, on the basis of factual and legal aspects and from the record of the suit, the plaintiff 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 injunction application is granted in favour of the plaintiff without any supporting evidence.

16. In such circumstances, looking to the record of the present suit and on the basis of above discussion, the Court is of the view that the present application cannot be granted to the plaintiff due to insufficiency of evidence. Therefore, the issue number - 1 is answered in negative and following order is passed for issue number - 2 in the interest of justice:

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
Judge,
Jambusar, Bharuch**

**(Deepesh Mittal)
4th Additional Civil**

GJ01379