

ORDER BELOW EXHIBIT - 21

1. The plaintiff has filed the present application seeking temporary injunction with the injunction application filed below Exhibit - 5. The plaintiff has stated they are in possession of suit property and have a boring in their over the suit property wherein an electricity connection has been obtained by them. The plaintiff states that he is in possession of the well with electric motor wherein the electricity connection has been obtained by him in the name of Ambalal Shankarbhai Thakar with consumer number - AG J 85 and 03135/00947/5. The plaintiff states that he has been using the connections whereas the defendants are trying to transfer the same to another person. Therefore, the plaintiff has prayed to restrain the defendants from transferring the connection to any other person or from restraining the defendants from interfering in using the same over the suit property.
2. The plaintiff has submitted the documents at Exhibit - 3 and 37 which have been recorded and considered while deciding the present application.
3. The defendants have not submitted any reply to the present application.
4. The learned advocates for the parties submitted oral arguments before the Court 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 he is in possession of the suit property and took the electricity connection with the consumer numbers from the Dakshin Gujarat Vij Company Limited. The plaintiff has stated to be in possession of both the connections whereas the learned advocate for the defendants has denied the same and stated

that the plaintiff is neither in possession of the suit property nor in possession of the electricity connection of the electric motor and boring.

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 and the electricity connection but the documents do not show the current possession of the plaintiff over the suit property. Further, the electricity bill and receipt of payment of bill does not mention the name of the plaintiff which proves that he is currently in possession of the same.

10. Further, the plaintiff has not been able to prove his current possession over the suit property while deciding the injunction application at Exhibit - 5 and there is nothing on record which shows that he is in possession of the electricity connections and in such circumstances, the Court does not find it justified to allow the present application. Therefore, keeping in mind the injunction application at Exhibit - 5 and the documents on record, it would be unjustified to allow the present application of the plaintiff.

11. 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 had failed to show the court that above all conditions are fully fulfilled in support his case.

12. Therefore, on the basis of factual and legal aspects and from the record of the suit, the plaintiff have 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.

13. 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, answers to the issues number - 1 is 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