

REGULAR CIVIL SUIT NO. 137 of 2016

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 (5) of the interim injunction application filed by the plaintiff. The brief facts of the plaintiff's case are that the suit property is situated at village Uchchad, Ta.Jambusar, Dist. Bharuch. The suit property is Block no.1165 H-Ar-Pr 1-19-39 Sq. Mtr. of land of aakar Rs. 21.50/-. Old survey number of the suit land was Survey no.527, 529 and 530. The suit property was purchased by Mangalbhai Dahyabhai, Hirabhai Dahyabhai and Chhotabhai Dahyabhai from Dhirajram Mulshankar Brahman by registered sale deed on 16/1/1958. The plaintiff no.1 is heir of Hirabhai Dahyabhai. The defendant no.2 is heir of Chhotabhai Dahyabhai and defendants are heirs of Mangalbhai Dahyabhai. The defendants have entered their names in the suit property. The plaintiff had approached the defendants for division of land as per the possession and entering their names accordingly but the defendant had denied. The defendant had threatened to transfer the land. Therefore the plaintiff has filed the present suit.
- (2)** The plaintiff has prayed for temporary injunction against the

defendants as per para 5 of this application. The notice was issued to the defendants, which was duly served upon them. The defendant no.1 had appeared through his Ld. Advocate Mr.A.S.Karmadwala but he has not filed any reply to the present suit. Therefore, my predecessor Presiding officer had ordered to close right to file reply of the defendant on 10/11/17 vide order below Exh.-1.

(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. In affirmative.
2. In affirmative.

3. 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. Heard learned advocates for both the parties to the suit.

5.2 The present plaintiffs have produced documentary evidences to show their prima-facie case vide Mark 3/1 to 3/3. It is not disputed that the plaintiff and defendants are cultivating the suit land since long as their ancestors had purchased the suit land jointly in 1958. Till now the suit land is not divided but still as per copy of revenue record produced by the plaintiff; names of only the defendants are entered. There is no reply or documents filed by the defendants. Which means that the land is in joint possession of the plaintiffs with the defendants. The present suit is filed for partition of the suit land.

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 After hearing both the parties' advocates I see the substance in the arguments of learned advocate for the plaintiff. The interlocutory remedy is intended to preserve the rights of the parties which may appear on a prima facie case. The court should not be oblivious of the fact that in restraining the defendant from exercising what is considered his legal rights is a vital issue and before grant of temporary injunction the comparative injury or loss likely to be caused to other side has also to be considered.

5.5 As per law, every person in ownership of his property has right to use it as per his wish without making breach of any law. Therefore, no person can be allowed to prevent him from enjoying possession of his land. The defendant had filed his appearance but did not file reply to the suit. From the above discussion, it appears that the plaintiff has prima facie case. He has got right to fully enjoy his property along with the defendants. If the plaintiff's right of possession over the suit land is not protected, the defendants on the basis of the revenue entry may transfer the suit land to the third party; which will give rise to multiplicity of

proceedings and the plaintiff will suffer irreparable loss which cannot be compensated in terms of money.

The interlocutory remedy is intended to preserve the rights of the parties, which may appear on a prima facie case. As per the above stated reasons I am of the view that the plaintiff has proved his prima facie case and the balance of convenience is also in his favour. If he is denied the injunction as prayed for, he will suffer irreparable loss which cannot be compensated in terms of money. Therefore my reply to Issue no. 1, 2 and 3 is 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 allowed. The plaintiff is granted temporary injunction under Order-39, Rule (1) and (2) and Section 151 of the Civil Procedure Code against the defendant as per para-5 of the present application till final disposal of the present suit.

(1) No order as to costs.

Pronounced in the open Court today on the 7th day of October, 2021.

Date :7/10/2021.
Jambusar.

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

