

Order below Exhibit-05

Ld. Advocate for the plaintiff	Mr. A. K. Vohra
Ld. Advocate for the defendant	Mr. M. G. Malek

1. Read the application along with the documents on record.

Heard Ld. Advocate for both the respective parties.

The Ld. Advocate for the plaintiff has submitted that the property described below is situated within the jurisdiction of this Honorable Court, in the middle of the residential area of Moje- Amanpur Nana, Tal. Jambusar, Dist. Bharuch.

Lot- A

Property No. 6, situated in the courtyard (faliyu) opposite the Chora of Moje- Amanpur Nana, corresponding to Serial No. 10, is the ownership property of the Plaintiff. The boundaries are as follows:

East: Way to Khadki Faliya.

West: Public road after the open space.

North: Property No. 5, corresponding to Serial No. 11 of the Defendant.

South: Public road.

Lot- B

Property No. 5, situated in the courtyard opposite the Chora of Moje- Amanpur Nana, corresponding to Serial No. 11, is the ownership property of the Defendant. The boundaries are as follows:

East: Way to Khadki Faliya.

West: Public road.

North: Property No. 4.

South: Property No. 6, corresponding to Serial No. 10, belonging to the Plaintiff.

Further the plaintiff has submitted that the original owner of Lot-A, Chandrahas Manubhai Ashabhai, resides abroad and cannot personally manage or supervise the suit property therefore, plaintiff has been appointed as the Power of Attorney holder and has filed this suit in that capacity and the property in Lot-A is the ancestral

property of the Plaintiff, held by way of ownership and possession for years, and is registered in the Plaintiff's name in the Panchayat assessment records and regarding Lot-B, it is an open plot (Ghabhan) belonging to the Defendant, registered in the name of the Defendant's father, Rahimbhai Afzalbhai, who has passed away and Heirship proceedings have not been conducted. Further the plaintiff has submitted that the Defendant's father purchased this plot from a previous owner and the Defendant is currently constructing a house on this open plot and the Plaintiff has no objection if the Defendant constructs within the legal limits of his own property however, the Plaintiff's house has windows and ventilators on the western wall for light and air, facing the open space but the Defendant, instead of staying within his limits, has begun digging trenches to construct a permanent toilet-bathroom touching the western wall of the Plaintiff's house. Further the plaintiff has stated that the Defendant has no right to demolish the plaster of the Plaintiff's western wall or construct a toilet-bathroom touching it and despite this, the Defendant intends to extend the construction up to the Plaintiff's terrace level, thereby blocking the windows and ventilators of the Plaintiff's house and to the best of the Plaintiff's knowledge, the Defendant has not obtained any construction permission from the Panchayat and the Plaintiff has filed an application with the Gram Panchayat regarding this, but as the Defendant is a headstrong person and disregards the law as well as Defendant's relatives are in the Panchayat, no action was taken and if the Defendant completes this illegal construction by encroaching upon the open space and government land, the Plaintiff will lose their legal rights. Further the plaintiff has submitted that the Defendant recently issued a threat to complete the construction within two days and this construction would permanently block light, air, and the use of that space hence, the present suit is filed along with application for getting interim injunction against the defendant and if the injunction is not granted in favour of plaintiff, then plaintiff will have to get involved in multiplicity of proceedings and will incur huge loss upon the plaintiff which cannot be compensated in terms of money and also suffer irreparable loss hence, it is prayed that the present injunction application is required to be granted.

2. The summons of the present suit were served upon the defendant and the defendant

appeared before the Court through their counsel and the defendant filed written statement vide Exh. 15 wherein the Ld. Advocate while denying the facts of the plaintiff's injunction application the Defendant contended that the true and factual position is that the property described as 'Lot-B' in Paragraph 1 of the Plaint was residential property even before 1985 and the original owner was Shivabhai Talshibhai Patel of Maghnad, Taluka Jambusar and he sold it to Mehmood Kasam Dawood Patel for ₹ 7,000 via a registered sale deed on 26.05.1985 and subsequently, the said owner sold 'Lot-B' to Rahim Afzal Ghanchi for ₹ 2,500 via a registered sale deed on 07.08.1990. Further the plaintiff has submitted that the said Rahim Afzal Ghanchi is the Defendant's father and when he purchased the property, it measured 31 feet in length and 23 feet in width, including a passage (Ravesh) on the north. After the demise of defendant's father, defendant being a legal heir, became the absolute owner and occupier of 'Lot-B' and the said fact is also admitted by the Plaintiff in the Plaint. The defendant further stated that as per the registered sale deed, there is a passage (Naveri) for water drainage to the south of 'Lot-B' however, the Plaintiff has illegally encroached upon this passage and blocked it by constructing a wall without their knowledge therefore, the Plaintiff has not approached the court with clean hands and the suit should be dismissed and the Defendant is constructing only within his own ownership boundaries and have left approximately 2 feet of space on the East-West side and 2 feet on the North-South side from his own land and defendant has not encroached on the government land or the Plaintiff's property but the Plaintiff is acting out of jealousy regarding defendant's new construction and intends to deprive them of the use and enjoyment of his own property. Further the defendant has stated that the Plaintiff has no Prima Facie case, and the Balance of Convenience does not lie in his favor and no irreparable loss will be caused to him but conversely, if an injunction is granted, the defendant will be deprived of his civil right to use his property, causing him irreparable loss that cannot be compensated in terms of money and prayed that the Honorable Court dismiss the suit and the injunction application with ₹ 25,000 as compensatory costs under Section 35-A of the C.P.C. and grant any other relief deemed appropriate in the interest of justice.

3. The plaintiff has filed the written arguments vide Exh. 28 in support of their injunction

application and the same has been taken into consideration by this court.

4. In view of the allegations by the plaintiff side, following points/issues arise for my determination under the present application.
 - (i) Whether the plaintiff proves that he has a prima-facie case ?
 - (ii) Whether the plaintiff proves that the balance of convenience is in his favour ?
 - (iii) Whether the plaintiff proves that there is an irreparable loss likely to be caused to the plaintiff if injunction order is not granted ?
 - (iv) What order and relief ?
5. My findings thereon are as under ;
 - (i) In Negative.
 - (ii) In Negative.
 - (iii) In Negative.
 - (iv) As per Final Order.

Reasons :-

6. As all the points/issues for determination of the present application are connected with each other, hence for the sake of brevity and convenience and for avoiding repetition of facts they are here discussed jointly.

As the plaintiff has sought ad-interim injunction during the pendency of the present suit, it is apposite to discuss general principles of granting and non-granting of the ad-interim injunction application. There are three basic principles for granting or refusing to grant temporary injunction i.e., prima facie case in favour of the party seeking injunction, Balance of convenience in favour of such person and lastly there must be an irreparable loss which are likely to be caused to party if injunction is not granted to such person. Thus, an injunction being an equitable relief and is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. In addition to these, three basic principles for granting or refusing to grant injunction, the conduct of the person seeking injunction should also be taken in to consideration because the granting of injunction is an equitable relief and is drastic or serious order and there are two basic maxims of equity which are important to be considered at the time of deciding injunction application which are “He who seeks

