

In The Court Of Principal Civil Judge ,Amod
Place;Amod
R.C.Suit No.36/2015

Plaintiff :

Heirs of Manaharbhai Ambalal Patel

(1)Anilbhai Manaharbhai Patel

(2)Vimalbhai Manaharbhai Patel

(3)Hiraben W/o Manaharbhai Patel

Versus

Defendant

(1) Heirs of Sanubhai Dayalbhai Patel

1/1 Parvatiben W/o Sanubhai

1/2 Chandrikaben Sanubhai Patel

1/3 manjulaben Sanubhai Patel

1/4 Ushaben Sanubhai Patel

1/5 Vinodbhai Sanubhai Patel

(2)Ramanbhai Dayalbhai Patel

(3)Sarfaraj Virendrasinh Rana

Order Below Ex.5

Plaintiffs have filed present suit for specific performance of contract and permanent injunction and along with the suit plaintiffs have filed present ex.5 application for temporary injunction .Brief facts of the application is as that following land is situated at village Rondh Taluka Amod District Bharuch.

Khata No. Block No. Total Area Akar (yearly Revenue Tax)

124 89 1.33.55 Rs.7.00

kahta No.is frequently changes and above No.is latest Number. For the sake of convince above mentioned land is

identified as suit land.

Lallubhai Dayalbhai, Sanubhai Dayalbhai and Ramanbhai Dayalbhai were the owner and occupier of the suit land. Form them Lallubhai Dayalbhai has died without leaving any heir. Sanubhai Dayalbhai has also died and his heirs are added as defendant No.1. Original owners have decided to sold out the suit land and a banakhat (agreement to sell) had been done on dated 15 th April 1975 and in that agreement total consideration was decided Rs.4999/- in which Rs.2500/- in cash had been paid to them on very same day of Banakhat (agreement to sell) and remaining consideration Rs.2499/- was decided to pay at the time of registration of sale deed. Some one have signed and put their thumb impression in the deed and that deed was made registered. Thereafter one another agreement was also executed on dated 11 th May 1976 thereafter one another agreement was also executed on dated 17th March 1977. Thereafter on dated 18th March 1978 remaining consideration was paid to the owners.Plaintiffs have paid the amount to owners on time and again .Possession receipt have also been given to plaintiffs and form that time plaintiffs have possession over suit land but suit land was new tenure land and hence it was decided to make registration after got permission from the Govt. Now the days suit land have been transfered in old tenure as per Govt.Rules. Original owners have signed in the presence of plaintiffs father and now a days plaintiffs father have been died and plaintiffs have became owner of suit land. Plaintiffs are ready and willing to perform the contract and they have been paid total consideration also and hence

plaintiffs have filed present suit for specific performance of contract.

Moreover plaintiffs have narrated that suit land is in their possession since 1975 but written agreement for possession was have been made in the year 1978. possession of the land is with plaintiffs. they are taking crop from the suit land and paying revenue tax also. In the running season plaintiffs have made Cotton(kapas) crop on the suit land and that crop is standing on the spot. Presently land prise has been increased and hence defendants intention have been changed and as their names are running on the record they wants to sold out the property and having that intention defendant came with plaintiffs on dated 22/3/2013 and asked plaintiffs to hand over possession of the land and threatened that , "give us possession other wise we will take possession and land is running on over name we will sold out the land". But defendants got failed in their bed intention .If defendant got succeed in their intention plaintiffs would got irreparable injury and hence they have filed present application.

Moreover plaintiffs have narrated that on dated 15th April 1975 when agreement had been done the suit land was new tenure land and it was mentioned in that agreement that sale deed shall be made after the land turn in old tenure. Now in the year 2012 suit land have been changed in old tenure and hence limitation starts from 2012. Plaintiffs have asked defendant on dated 23/3/2013 to make registered sale deed but they have denied the same ,and as per Article 54 of limitation Act suit can be filed from the date of denial hence suit has not barred of limitation.

By this application plaintiffs have asked following reliefs.

- (a) Be grant temporary injunction against defendants not to disturb plaintiff's possession over suit land and shall not remove them from possession without due process of law and shall not transfered that land to any one else.
- (b) Be grant cost of the application .
- (c) Be grant all other reliefs as are just and proper looking to the nature of the application.

Urgent show cause notice have been served on defendants and defendants No.1/1 to 1/5 and defendant No.2 have filed their written statement by ex.13 in which they have denied the averments of plaintiffs in toto. They have raised primary objection that suit is barred by law of limitation and it has restriction of non joinder of necessary parties. Plaintiffs have mentioned false clause of action with a view to file the suit and they are not came before the court with clean hand and hence they are not entitled for any equitable remedy.

Defendants have denied the suit in toto and have mentioned real fact as that suit land is ancestral property of defendants .and father of defendant No.2 and grandfather of defendant No.1/1 to 1/9 Dayalbhai Ishwarbhai was owner of that land and he had died on dated 1/3/1961 and his three sons namely (1) Dahyabhai Dayalbhai (2)Sanubhai alias Lallubhai Dayalbhai and (3)Ramanbhai Dayalbhai were heirs of Dayalbhai. Looking to the banakhat produce by plaintiffs it appears that it is without possession and Dayalbhai's name is not mentioned in that banakhat and Sanubhai and Dayalbhai is the same person who is defendants father. And

hence it clearly shows that banakhat is bogus and fabricated. Father of defendants No.1/1 to 1/5 and defendant No.2 have never executed said banakhat.

Moreover defendants have averred that suit land was under prohibition of sec.43 of Tenancy and agricultural lands Act. And it can not be sold out without permission from the competent authority. Hence alleged banakhat is void ab initio.

Defendants have denied the other averments of plaintiffs and asked to reject the suit and application with cost.

In countering the written statement plaintiffs have filed their counter affidavit by ex.15 in which they have denied averments made by defendant in their written statement.

Defendant No.3 have filed his written statement by ex.27 in which he has denied the averments of the suit and averred that he is bonafied purchaser of the suit land and have possession over suit land and asked the relief to reject the suit and ex.5 application with cost.

Plaintiff have submitted following documents in support of this application.

- (1) Copy of 8 A of Khata No.124 of village Rondh by mark 3/1
- (2) Copy of 7/12 of Block No.89 of village Rondh by mark 3/2
- (3) Copy of Banakhat dated 15th April 1975 by mark 3/3
- (4) Copy of contract dated 11th May 1976 by mark 3/4
- (5) Copy of contract dated 17th March 1977 by mark 3/5
- (6) Copy of contract dated 11th March 1978 by mark 3/6
- (7) Possession receipt by Mark 3/7
- (8) Revenue receipts by Mark 3/8

defendants No.1/1 to 1/5 and No.2 have submitted following documents.

- (1)Copy of revenue entry No.894 by Mark 16/1
- (2)Copy of revenue entry No.900 by Mark 16/2
- (3)Copy of revenue entry No.1154 by Mark 16/3
- (4)Copy of revenue entry No.1389 by Mark 16/4
- (5)Copy of 7/12 of suit land from 1976-77 to 1983-84
- (6)Copy of 7/12 of suit land from 1985-86 to 1995-96
- (7)Copy of 7/12 of suit land from 1996-97 to 2003-04
- (8)Copy of death certificate of defendant No.1/1/to 1/5 by mark 16/8
- (9)Copy of death certificate of Dahyabhai Dayalbhai by mark 16/9
- (10)Copy of revenue entry No.2465 by Mark 16/10
- (11)Copy of 7/12 of suit land dated 3/9/2013 by Mark 16/11
- (12)Copy of latter written by Bharuch District Co.op.Bank regarding cancellation of charge from suit land by Mark 16/12.

Defendant No.3 have filed following documents.

- (1)Copy of sale deed by Mark 28/1
- (2)Copy of revenue entry No.2475 by Mark 28/2
- (3)Copy of 7/12 of suit land by Mark 28/3.

Ld. advocate Mr. M.U.Patel has argued on behalf of plaintiff .He has argued that plaintiff is owner and occupier of suit land .Original owner of the land have been executed banakhat e. a.agreement to sale in favour of plaintiffs father . Total consideration of the suit land was Rs.4999/- and out of that Rs.2500/- had been paid on the very same day of banakhat and at that time suit land was new tenure land

and as per law new tenure land can not be directly transferred and hence it was necessary to take permission for sale from competent authority to sold out the land and to change the land from new tenure in to old tenure and hence it was decided make registration of sale deed after change the land from new tenure in to old tenure . Hence limitation would start from the time when land tenure is changed. After the banakhat defendants have got full consideration and handed over possession of suit land to plaintiffs and passed a possession receipt in favour of plaintiffs also and also executed deferent contracts in that regard which have been produced by plaintiffs. Now a days suit land have been changed from new tenure in to old tenure and when plaintiffs asked defendants to execute sale deed defendants denied the same and threatened to take possession of suit land from plaintiffs by taking law in their hands and hence plaintiffs have no other alternative but to file the suit and hence this suit has been filed. Plaintiffs No.1/1 to 1/5 and No.2 were original defendants but they have sold out the suit land to defendant No.3 during the pendency of the suit and defendant No.3 has been added .The documents produced by plaintiffs are clearly sports plaintiffs case and looking to that documents it appears that plaintiffs have very strong prima facie case and if interim injunction asked in the application would not be granted then there is full possibilities that defendants will take possession from plaintiffs by taking law in their own hands and if such happen plaintiffs would suffer ere parable injury and balance of convenience is also in favour of plaintiffs and hence all three ingredients necessary for interim injunction are in favour of plaintiffs hence

interim injunction asked by the plaintiff is required to be granted and by this arguments Ld. advocate Mr. M.U.Patel has requested to grant interim injunction asked by plaintiff. In support of his arguments Ld.Advocate Mr.M.U.Patel have placed reliance on following authority.

(1)1985 G.L.H.UJ 56 page 47

(2)2012(3)G.L.R.page 2477

(3)AIR 2004 SC page 4609

(4)1998(6)SCC page 363

Ld.Advocate Mr.M.U.Patel Have not filed copy of the authorities .In support of his oral arguments Ld.Advocate Mr.M.U.Patel have also submitted his written arguments by ex.34 but written arguments are same as oral arguments hence I avoids the repetition.

In countering plaintiff side arguments Ld.Advocate Mr.F.J.Khan have argued on behalf of defendant No.1 and 2 in which he has argued that plaintiffs have filed present suit for specific performance and injunction on the base of a banakhat dated 15th April 1975 So prima facie it appears that suit for specific performance has been filed after lapse of 35 years hence suit is clearly time barred. Looking to averments of plaintiffs in pera 2 of the suit and application it has been mentioned that," Some one have made signature and put their thumb imprection" they have not clarified who have made signature and put thumb impression. Original owner of the suit land was Dayalbhai and he had three sons namely (1)Dahyabhai(2)Sanubhai alias Lallubhai and(3)Ramanbhai and their names were running on the revenue record which has been produced by Mark 16/5 out of them Dahyabhai signature is not mentioned in banakhat

though he was co owner of suit land. Sanubhai and Lallubhai are the same person but his thumb imprection in banakhat has been mentioned in banakhat as deferent person.in main banakhat which has been produced by Mark 3/3 2 thumb impression is there but it has not been mentioned that whose thumb impression. Suit land has been changed in the year 2009 while present suit has been filed in the year 2013 Hence Suit is purely time barred. As per plaintiffs averments itself banakhat was without possession . It is undisputed fact that suit land was new tenure land hence there does not any question arise for hand over the possession. All three ingredients for temporary injunction are against plaintiffs .By this arguments Ld.Advocate Mr.Pathan requested to reject the suit with cost.

On behalf of defendant No.3 Ld.Advocate Mr.Y.D.Patel have filed his written arguments by ex.32. in which he has argued the same as argued by Ld. Advocate Mr.Pathan hence I avoids those arguments moreover he has argued that defendant No.3 have purchased the suit land by paying full consideration hence he is bonafied purchaser for value without notice. Defendant No.3 has possession over suit property. Plaintiffs have filed the suit after passing very long time and legal maxim is very much clear that "Iquity aids the vigilant and not the indolent".By that argumewnts Ld.Advocate Mr.Y.D.Patel has requested to reject the suit and application ex.5 with cost.

Looking to the pleading submission of both the sides and documents produced by both the sides following issues are arise for determination of this application.

(1)Whether plaintiffs have prima facie case?

(2) Whether balance of convenience is in favour of plaintiffs?

(3) Whether plaintiffs would suffer irreparable injury if interim injunction asked in the application would not be granted?

(4) What final order?

My finding for above issues are as under:

Issue No.(1) In

Issue No.(2) In

Issue No.(3) In

Issue No.(4) as per final order

Reasons for finding

Issue No. 1 to 3 are related with each other hence with a view to avoid repetition all three issues are discussed with together .

Granting or refusing temporary injunction rest on the sound exercise of the discretion of the courts. It is cardinal principal of law that at the time of deciding injunction application, elaborate documentation are not required to be considered, documents are required to be consider only with a view to decide whether plaintiff has prima facie case and whether plaintiff balance of convenience is in favour of plaintiff and whether plaintiff would suffer irreparable injury if interim injunction asked in the application would not be granted and documents are calculated with a view to that purpose only.

Here plaintiffs are came before the court with a case that original owner of suit land had executed banakhat without possession in favour of plaintiff's father and at that time suit

land was new tenure land and after that at deferent time they have got consideration and original owner who have executed banakhat have taken total amount of land and after taking total consideration possession have also been handed over to plaintiff and now a days plaintiffs are in possession of suit property and now a days suit land have been transfered from new tenure to old tenure and plaintiffs are ready and willing to perform the contract but defendants have denied the same and threatened to sold out the suit property.

Defendants main defense is that neither they nor their father have sold the suit land to plaintiffs and have not executed any banakhat . Another defense is that suit land is new tenure land hence there does not any question arise for handed over possession.

Now looking to Mark 3/3 (main banakhat on which suit has been filed) on last page two thumb impression are there but it has not mentioned that it is whose thumb impression. Plaintiffs themselves have also narrated in pera 2 of plaint that, some one have put their thumb impression.

For the sake of arguments if we believe that banakhat has been executed and possession have been handed over ,it is undisputed fact that suit land is new tenure land .I think that it will be batter for under stand what is old tenure and what is new tenure. There does not any provision mentioned in Gujarat land revenue cede regarding old tenure and new tenure ,but sec. 68 of the said Act e.a. Gujarat Land Revenue Code states that,"An occupant is entitled to the use and occupation of his land for the period, if any, to which his [tenure] is limited, or if the period is unlimited, or a survey settlement has been extended to the land in perpetuity conditionally on the

payment of the amounts due on account of the land revenue for the same, according to the provisions of this Act, or of any rules made under this Act, or of any other law for the time being in force, and on the fulfillment of any other terms [or conditions] lawfully annexed to his [tenure]:

The land falls under above provision are identifies as old tenure land.

Proviso of above sec. states that "[Provided that nothing in this or any other section shall make it, or shall be deemed ever to have made it, unlawful for the Collector at any time to grant permission to any person to occupy any unalienated unoccupied land, for such period and on such conditions as he may, subject to [rules made by the [State] Government] in this behalf], prescribed, and in any such case the occupancy shall, whether a survey settlement has been extended to the land or not, be held only for the period and subject to the conditions so prescribed]

The land allotted under above proviso is identifies as new tenure land.

Looking to the proviso it is very much clear that one who is having new tenure land he can not sold out his land or can not handed over possession to any body else without permission .

Now looking to the Mark 16/5 it appears that suit land is prohibition of sec.43 of Bombay Tenancy Act. For the sake of convenience that sec. is re produce as Under.

Sec.43 of Bombay tenancy Act

No land purchased by a tenant under sections 32, 32F, [2] [32I, 32O, [3] [33C or 43ID]] or sold to any person under section 32P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment [4] [***] without the previous sanction of the Collector, such sanction shall be given by the Collector in such circumstances, and subject to such conditions, as may be prescribed by the State Government:

Provided that, no [5] [such sanction shall be necessary where the land is to be mortgaged in favour of Government or a society registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, for raising a loan for effecting of

any improvement of such land.

2) Any transfer [6] [***] of land in contravention of sub-section (1) shall be invalid.]

Looking to this provision a person who have got land under the provision of Tenancy Act he is restricted by alienate that property. And if such transaction have been done it is in valid.

Looking to above provision of law if we believe that alleged transaction have been done then also it is void ab initio. And when alleged transaction is itself is invalid I can's say that plaintiff have prima facie case and when plaintiff have no prima facie case there is no question that balance of convenience or irreparable injury is in favour of plaintiff and hence I replies issue No.1 to 3 in in negative and hence I pass following order.

ORDER

Plaintiff's application ex.5 is hereby reject.

No order as to cost.

signed and pronounced in open court in open court today on 6th June 2016.

Date:8/6/2016

Araft A. Vayda
Principal civil judge,
Amod
Code No.Gj 00986