



IN THE COURT OF PRINCIPAL CIVIL JUDGE, AT: NETRANG BHARUCH.

REGULAR CIVIL SUIT NUMBER: 4/2026

APPEARANCE:

Learned advocate Mr. A H PANDYA for the plaintiff.

Learned advocate Mr. S N PATEL for the defendants.

ORDER BELOW EXHIBIT 5

1. The present application is filed by the applicant-plaintiff under the code of civil procedure, 1908 seeking prayer to the effect to grant an interlocutory injunction against the defendants who happens to be the neighbour of the plaintiff and in favour of the plaintiff to the effect that defendants shall not carry out any obstruction activity in the suit property city survey number 1134 property number 18/12 south side (right of entrance) near by road as annexed schedule until the suit is finally disposed of.
2. As per the cause title, the present suit is filed by plaintiff for obtaining declaration and permanent injunction against the defendants.

- a. It is averred in the plaint and in the present application that the defendants happens to be the neighbour of the plaintiff
- b. further it is averred that plaintiff is owning a property housing residence city survey number 1134 and panchayat property number 18/12. The plaintiff is carrying a business of (LUHAR). The plaintiff is paying the taxes relating to the above property.
In the front of the premises after some space in the south side a road is there.
- c. **The plaintiff further avers that defendant number 1 and 2 have given that “aforesaid space” to the defendant number 3 at a monthly rent of Rs. 13,000/- for business purposes illegally.**
- d. **It is averred that no one is permitted to use that “aforesaid space” and is merely for the purpose of entrance and for the purpose of parking the vehicle of the owner of the premises.**
Defendants are carrying out encroachment activities in the property of the plaintiff and hindering the easementary rights for which the plaintiff preferred a complaint to the netrang police station on dated 24/11/2025. Thus to prevent illegal encroachment present suit is being filed.
- e. Lastly the plaintiff has claimed multiple reliefs at para 6 of the plaint.

Arguments canvassed by the learned advocate Mr. A H PANDYA
on the behalf of plaintiff.

3. Learned advocate appearing for the plaintiff have argued that all the necessary requirements for the grant of the temporary injunction are satisfied in the present case and the plaintiff is entitled to obtain a temporary injunction as stated in his application.
4. Further it is argued by the learned advocate for the plaintiff that there is a prima facie case in the favour of the plaintiff. Further it is argued that both the plaintiff and defendants happens to be the neighbours and the defendants have violated easementary rights of the plaintiff. Further to prove this contention he has drawn the attention of this court towards documents produced along with the plaint.
5. Further it is argued that Defendants has started the encroachment in the entire premises and this encroachment is done with sole intention to harass his client.
6. Further it is argued by the learned advocate of the plaintiff that the defendant number 3 is selling tea (laari stall on wheels) at the road side which is permitted by the defendant number 1 and defendant number 2 at a monthly rental basis in such a manner that it is violating the easementary rights of the plaintiff. Defendants cannot

forcibly carry out such activities or continue to harass the plaintiff. hence the balance of convenience is in the favour of the present plaintiff. Further it is argued that if the defendant succeeds in encroachment over the entire suit property, plaintiff will not be able to enjoy the possession over the property belonging to the plaintiff and will cause injustice to the plaintiff.

7. Further it is argued by the learned advocate for the plaintiff that there is a serious injury and huge loss will be caused to the present plaintiff in the event the temporary injunction is refused, thus to prevent the encroachment activity over the suit property and to prevent multiplicity of proceedings present injunction application must be allowed till the suit is finally disposed of. No further submissions are made before this court.

Brief of submissions of learned advocate for the defendants Mr.

S N Patel

8. It is stated in written statement that the averments made in present application and in the plaint are totally false, and fabricated facts and is not admitted by the defendants.
9. The plaintiff have not joined government and road department as a party to the present proceedings. it is argued by the advocate that it is admitted position of fact that the permission is given to defendant number 3 to run a laari stall on wheels by the defendant

number 1 and 2 without any monetary benefit and not on rent. Lastly the advocate prayed to reject the present application.

Reasons & Findings

10. Having heard the arguments advanced by the learned advocate of the plaintiff and taking into consideration written statement of the defendants and arguments advanced after perusal of the documents on record in the opinion of this court and in the interest of justice and in the present facts and circumstances of this case the present application deserves to be “partially allowed”. Following are the findings and reasons for the same.

11. When the application was heard at length, At present there is admitted position of fact that the permission is given to defendant number 3 to run a laari stall on wheels by the defendant number 1 and 2 without any monetary benefit and not on rent for the purpose of selling Chai (tea). This court would like to reproduce the gist of section 6 clause C of the transfer of property act, 1882. In simple words, easement is a right which exists for the beneficial enjoyment of a land and is exercised upon the land of another person. The land or tenement for whose beneficial enjoyment this right is exercised is known as dominant heritage and the land or tenement upon which this right is exercised is known as servient heritage. Easement is an incident of ownership of the dominant

heritage. **It is a right attached with the property. It has no independent existence. Therefore, it cannot be detached from the dominant heritage and transferred separately.** In order to restrain the defendant number 3 from carrying out any encroachment activity over the suit property, the plaintiff has approached this court and this court is of the firm opinion that there is no merit in the argument that government should have been joined as a party. the dispute is totally private in nature.

12. There appears to be some substance in the submission of learned advocate of the plaintiff that the aforesaid space can only be used for parking the vehicle of the owner and only for the purpose of right of entrance. Defendants are violating the easementary rights.

13. This court is satisfied that the applicant has raised a bona fide dispute, that there is an arguable case for trial which needs investigation and a decision on merits, and that on the facts before this court there is only a probability of the applicant being entitled to the relief of declaration and injunction.

14. Further the present application is clearly governed by the provisions of order 39 rule 1 of the code of civil procedure which clearly explains the cases in which temporary injunction can be granted. The primary object & purpose of granting interim relief

under order 39 Rule 1 of code of civil procedure is to preserve the property in dispute till the legal rights and conflicting claims of the parties before the court are adjudicated. In the facts & circumstances of the present case it is necessary to preserve the disputed suit property.

15. Further this court is satisfied that if status quo is not granted, there will be multiplicity of proceedings and a serious irreparable injury and huge loss will be caused to the present plaintiff. In order to prevent the parties from further transferring the suit property and to prevent multiplicity of proceedings there is no other remedy open to plaintiff by which they can protect themselves from the consequences of the apprehended injury thus status quo must be partially allowed till the suit is finally disposed of. In the present facts & circumstances of the case the apprehended injury appears to be a material one, which cannot be adequately compensated by damages.

16. **Recently the apex court in the case of Gyan Prakash vs union of India 2025 (0) AIJEL-SC 75383 directed the statutory authorities to remove unauthorised occupation of National highways for safety. Therefore the present defendant number 3 should be stopped for such encroachment activities.**

17. Hence there are justifiable grounds and this court is inclined to exercise its discretion and in the interest of justice following order is passed.

FINAL ORDER

1. The application is “partially allowed”.
2. **Since section 6(c) of transfer of property act totally prohibits transfer of mere easements. Until the suit is finally disposed of defendants are ordered to remove the laari stall on wheels which he uses for the purpose of selling tea or any other purpose at the premises of the plaintiff and defendants.**
3. **The defendant number 3 is given one week time to remove such encroachment and failing which a commission patra be issued to the Netrang police station for removal of such encroachment.**
4. No order as to costs.
5. It is made clear that the observations made in this order will not affect the trial of the suit.

Pronounced in the open Court today on this dated 9th April
2026.

(Bharat Ramchand Lakhwani)
principal Civil Judge, netrang
Judge Code-GJ01711