

**ORDER BELOW EXH.5**

1. The Present plaintiff has submitted an application at Exh.5 for getting order of temporary injunction under Order 39, Rule 1 & 2 and Section 151 of the Civil Procedure code (herein after referred as to "C.P.C" in short). By filling this temporary injunction application, the present plaintiff has prayed following relief in para-11 which are as under :-

1. The Hon'ble Court may pass an order to restrain defendants from transferring the plot bearing Plot No.109, City Survey No.3184 ad-measuring 83.69 Sq.mt. which is situated at Village-Dhanera, Tal.Dhanera, Dist.Banaskantha to any other person in any what so manner and also restrain defendants to make any change in the record of the aforesaid property or restrain defendants to create any charge over the aforesaid property till the final disposal of the suit.
2. Any other reliefs of this application may be granted.
3. The Cost of this application may be given from defendants.

2. The brief facts of the present injunction application are as under :-

It is the case of the plaintiff that he is residing at Juna Deesa, Tal.Deesa, Dist.Banaskantha and he is engaged in labour work. The defendants no.1 to 4 are also residing at Juna Deesa. The defendant no.1 is his sister and the defendant no. 2 is Government Officer and son-in-law of defendant no.1. The defendants no.3 & 4 are joined as parties as they have got illegal possession over the property which is of his ownership. The defendant no.5 is an established institute by law and the defendant no.6 is a Government. It is further case of the plaintiff that he got the residential plot bearing plot no.109 ad-measuring 100 square yard for free under the Government Scheme of relief. Thereafter, the said plot is entered as City Survey No.3184 ad-measuring 83.69 Sq.mt. in his name on 20/04/1977. This plot is only allotted to him. This property is running on his name in the assessment register, property card and it's tax is also paid by him. Four boundaries of the aforesaid property as follows :-

East - Plots are existed.

West - The Ladhapura Primary School is  
existed.

North- Plots are existed after leaving the road.

South- A open land is existed.

It is further case of the plaintiff that the aforesaid plot is allotted to him under the Government Scheme of relief. However, the name of defendant no.1 is wrongly entered into "Sanad" under the collusion between Government Officers and defendants no.1 & 2. The name of defendant no.1 is also entered into Assessment and tax receipt. By this way, the name of defendant no.1 is wrongly entered into the aforesaid property. The disputed property is in his independent possession and occupation since it was allotted to him from the Government. It is further case of the plaintiff that 2 years ago, he was resided at Juna Deesa to settle his sons in labour work. During that time, the defendants no.1 to 4 made illegal shopping center on his aforesaid property. When he went to Dhanera, he came to know that the defendants no.1 to 4 made illegal shopping center on his property with intention of snatching the property from him. By this way, the defendants no.3 & 4 have also got illegal possession over his property. Thereafter, he asked information in Government Office in that regard but he got evasive reply. Thereafter, he got the information under the Right to Information Act. On getting information, he came to know that his name is running in the property card but the defendant no.1 has wrongly entered her name in the revenue record with malafide intention. When he said to the defendants no.1 to 4 about illegal construction on the disputed plot, at that time, they are speaking abusive language and also giving threat of killing to him. He also filed the complaint in that regard in Dhanera Police Station. By this way, the defendants no.1 to 4 have made illegal construction on the property of the plaintiff under the collusion and the defendants no.5 to 6 have not provided necessary information to him. The act of defendants is illegal and against the provisions of law. Therefore, the cause of action is arisen for him to file the present temporary injunction application against defendants Looking to the above circumstances, the prima facie case and balance of convenience are in

his favour. If permanent injunction is not granted, then, the object of filing the suit is frustrated and irreparable loss will be caused to him which will not be compensated in terms of money. While the injunction application is granted, then, no loss will be caused to other side. Hence, the present temporary injunction application may be granted.

3. Notices duly served to defendants and defendants no.1 to 4 have appeared through their Ld. Adv. Mr. O.J.Nogoh and he has submitted their written reply at Exh.22 wherein they have denied each and every averment made by the plaintiff in the present injunction application and in the present suit. They have also contended that the present plaintiff have wrongly joined the defendants no.2 to 4 as parties in the present suit. It is the case of the defendants no.1 to 4 that the disputed plot is only allotted to the defendant no.1 and it's "Sanad" which was given to the defendant no.1 by Taluka Development Officer, Dhanera. The defendant no.1 got possession of the disputed plot since it was allotted to her. The plaintiff has never been resided at Dhanera but he is residing at Juna Deesa for long times. The defendant no.1 has made out a house of simple roofs on the disputed plot and she is living in the said house. she also pays tax of the disputed plot. The Government has allotted a plot to the plaintiff for relief at another place of Dhanera. The plaintiff has never got possession of the disputed plot but the plaintiff has wrongly entered his name in the "Sanad" as joint co-owner of the disputed plot. It is further case of defendants no.1 to 4 that the defendant no.1 has neither given the disputed plot to the defendants no.2 to 4 nor made any illegal shopping center on the disputed plot. No any illegal act is done by the defendants so that breach of terms and condition of the disputed plot would be made out. It is further case of the defendants no.1 to 4 that the plaintiff has given application to the Police Station to remove possession of the defendant no.1 from the disputed plot. It is further case of the defendants no.1 to 4 that the defendant no.1 has been having peaceful possession on the disputed plot since the year 1985. The present plaintiff has no any right in the disputed plot. However, there is a house of the plaintiff on the disputed plot but the defendant no.1 has never raised any dispute in that regard as the

plaintiff is her brother and the defendant no.1 kept trust on the plaintiff. The fact that the defendant no.1 had made house on the disputed plot in the year 1985-86 which was in the knowledge of the plaintiff. However, he remained silent since long time and not raised dispute in that regard after long time. It is further case of the defendants no.1 to 4 that the present plaintiff has wrongly filed the suit against defendants. It is further case of the defendants no.1 to 4 that the present plaintiff is not an owner of the disputed plot and he has not made any house on the disputed plot and he has not used the disputed plot for the residential purpose. By thus, there is no possession of the plaintiff on the disputed plot. Therefore, the prima facie case and balance of convenience are not in favour of the plaintiff. If the present injunction application is allowed, then, the defendant no.1 has to leave the possession of the disputed plot and irreparable loss will be caused to the defendant no.1. Hence, the present plaintiff cannot get any mandatory injunction order. The present plaintiff has mis-pleaded and suppressed the material facts and he has not come before the Hon'ble Court with clean hands. Hence, the present injunction application may be rejected with cost.

4. The defendant no.6 is also appeared through his Ld. Adv. Mr. M.P.Chadhari and he has submitted his written reply at Exh.18 wherein he has denied each and every averments made by the plaintiff in the suit and the present injunction application. He has further contended that the main dispute about the suit plot is arisen between private parties and no any relief is required to be obtained from the defendant no.6 for the plaintiff. So, the plaintiff has wrongly joined the defendant no.6 as a party. He has further contended that the present plaintiff has not produced any order to prove that free plots are allotted by the Government under the Scheme of relief. Further, there is no any record in the office of defendant no.6 in that regard. He has further contended that the plaintiff has also not produced any evidence to prove that he is an owner of the disputed plot. He has further contended that City Survey Office, Dhanera and Collector Office, Banaskantha are necessary parties to prove title of the disputed plot but the plaintiff has not joined them as parties. Hence, the present suit is required to be dismissed for want of

necessary parties. He has further contended that as per Sec.270 of the Panchayat Act, the plaintiff has to give notice to defendant no.6 before filing the suit against the defendant no.6. Hence, the present suit is not tenable. He has further contended that the prima facie case and balance of convenience are not in favour of the present plaintiff. If the present injunction application is not granted, then, no irreparable loss will be caused to the plaintiff, while if the injunction application is granted, then, irreparable loss will be caused to the Government. Further, the balance of convenience is in favour of the defendant no.6. Hence, on the above noted grounds, the present injunction application is required to be dismissed with cost.

5. It is to be noted that the defendant no.5 did not appear in this proceeding.
6. Ld. Adv. Mr.B.G.Meghani for the plaintiff side has submitted his written argument at Exh.26 wherein he has argued that it is a prima facie case in favour of the plaintiff. He has further argued that the defendant no.1 is residing at Juna-Deesa and she is having possession on the disputed plot. It is not possible that one person can be resided on two places permanently. Hence, it is crystal clear that the defendant no.1 got possession on the disputed plot with intention of snatching the disputed property from the plaintiff. He has further argued that the disputed plot is allotted to the plaintiff by the Government under the scheme of relief and the title of the said property is running in the name of the plaintiff. Therefore, the plaintiff has produced a copy of property card vide documentary list of Exh.4. He has further argued that the present plaintiff has not got permission for any kind of construction. But the defendants no.1, 3 & 4 have not mentioned in their reply that they have made legal construction by getting permission from Municipality or Taluka Development Office. He has further argued that the disputed plot is allotted to the present plaintiff for the residential purpose but the defendants no.1, 3 & 4 have made illegal construction under the collusion and they use the disputed property as a commercial purpose by making shops. He has further argued that looking to the panchnama which produced vide documentary list of Exh.24, it appears that the defendant no.1,3,4 have made illegal construction of shops and they used the disputed property for

the commercial purpose. He has further argued that the disputed property is in danger that defendants no.1 to 4 transfer the disputed property to any other person in any what so manner and dispossess the plaintiff from the disputed property as per order 39 Rule-1(a),(c) of the C.P.C. He has further argued that the defendant no.5 has power to give permission for construction. However, the defendant no.5 has not given written reply of the suit and has also not remained present at the time of Panchnama. The defendant no.6 has also not remained present at the time of panchnama. He has further argued that if the present injunction application is not allowed, then, the object of filing the suit will be frustrated and damage will also be caused to rights of the plaintiff. Hence, the present injunction application may be allowed in favour of the present plaintiff.

7. Ld. Adv. Mr. O.J.Nogoh for the defendants no.1 to 4 have argued that the present plaintiff and the present defendant no.1 are real brother and sister. The present plaintiff has filed the present suit for getting possession, declaration and permanent injunction. It means that the present plaintiff is not having possession on the disputed property. If the plaintiff is not having possession on the disputed property, then, how can he get mandatory injunction? The mandatory injunction order can be given in rarest of rare case. The present plaintiff has prayed relief for possession of the disputed property. Under the above circumstances, the injunction order cannot be passed. He has further argued that the plaintiff has produced copies of "Sanad" and assessment register of Municipality vide Mark 4/2 & 4/3 respectively. Looking to both documents, the name of defendant no.1 is mentioned as owner of the disputed property. He has further argued that Panchnama and Map are prepared by the Court Commissioner and looking to these both documents, the possession of defendant no.1 on the disputed property is appeared. He has further argued that the "Sanad" of disputed property is a prohibited authentication, therefore, the disputed property cannot be sold out to any other person. He has further argued that the present plaintiff has no any right in the disputed property and he has no possession of the disputed property. Therefore, there is no prima facie case in favour of

plaintiff. Further, looking to the record, the balance of convenience is in favour of the defendant no.1. Further, there is no question of irreparable loss. Hence, the present injunction application is required to be rejected with cost.

8. Ld. Adv. Mr. M.P.Chaudahri for the defendant no.6 is not remained present for oral argument.
9. On the basis of above rival contentions and pleadings of both respective parties, following issues are required to be framed for deciding present application which are as under:

**Issues:**

1. Whether the plaintiffs have prima facie case?
  2. Whether the balance of convenience is in favour of the plaintiffs?
  3. Whether injunction if refused then irreparable loss cause to the Plaintiff?
  4. What order?
10. My findings on the above stated points are as under.

**Findings:**

1. In the Affirmative.
2. In the Affirmative.
3. In the Affirmative.
4. As per final order.

**REASONS**

11. I have heard Ld. Advocates of both respective parties, read the written arguments Exh.26 submitted by plaintiff and kindly perused injunction application & written statements and I have also gone through the documentary evidence which produced on record.
12. **Issues No. 1 to 4** :- All these issues are common and similar to adjudicate the present application. Therefore, I discuss all these issues together for the sake of convenience and brevity.
13. In support of his injunction application, the present plaintiff has produced evidence vide documentary list of Exh.4. Looking to the Mark 4/1 - Property card, it is appeared that the title of disputed property is running in the name of the plaintiff. Looking to the mark 4/2- "Sanad" of the disputed Property, it shows that the disputed property is jointly allotted to the defendant no.1 and

the present plaintiff under the Government Scheme of relief. Further looking to the mark 4/3 - Assessment register of Dhanera Municipality, it reveals that the name of defendant no.1 and plaintiff are mentioned as joint owner and possessor of the disputed property. It transpired from mark 4/1 that the disputed property had been entered in his name vide entry dated 20-04-1977 and later documents wherein name of defendant no.1 had been appeared on record which is a matter of evidence. The present case of the plaintiff is to protect the property which is in his name though the disputed property is in joint name of defendant no.1 and plaintiff. From the report and map of the commissioner, it appears that there is shops in the plot. It is admitted position that Considering above all documents produced by the plaintiff, plaintiff is not in possession of the disputed property and to protect his property, while the same is in possession of defendant no.1, to pass on the title to another person by any other means. It is the issue that how the name of defendant no.1 is entered in "Sanad" of the disputed property and assessment register of the Dhanera Municipality which required to be established by the plaintiff during trial. Though plaintiff fails to produce order of the Government Scheme of relief or order of Taluka Development Officer to prove that the Government has allotted plots under the scheme of relief and the disputed property is only allotted to him but at present both of them names are appeared in the revenue record and entry on 20-04-1977 is in the name of plaintiff. On the basis of production of a copy of property card, it cannot be said that he is an independent owner of the disputed property and how the name of the defendant no.1 is appeared afterward is a matter of evidence and the said property is in possession of defendant no.1 which requires to be protected till the disposal of present suit. Further, as per the say of the plaintiff, he got the disputed property under the Government Scheme of relief on 24/05/1976 for the residential purpose though it appears that the plaintiff has never made any kind of construction for the residential purpose but it does not mean that property can be used for constructing shops. Further, the name of defendant no.1 is entered in assessment register but the name of defendant no.1 is not entered in property card, then, it is a matter of evidence

and plaintiff has to established how name of defedant appeared in the assessment register because defendant no.1 also not established how she got her name entered in the property in w/s. The present plaintiff and the defendant no.1 are real brother and sister and looking to the record, it is transpired that the disputed property is jointly allotted to both of them under the Government Scheme of relief though the same has been denied by the defendant no.6 but to decide the issue property must be protected till the disposal of the suit. Further, looking to the panchnama and map of the disputed property which produced on record vide Mark 24/8 and 24/9, it is transpired that the defendant no.1 has made shop type rooms. Looking to the entire documentary evidence produced in the present case, plaintiff has prima facie case. In that situation, stand of defendant that the disputed property is not in the name of plaintiff can not be believed without recording evidence. It is settled principle that Courts below refused to grant any interim relief on the ground that plaintiff has no prima facie case and delay in taking action on part of plaintiff contended that as prima facie case, courts below ought to have passed order to maintain status quo and held, ends of justice would be served and equities would be adjusted if respondents are restrained till passing of further order from transferring or alienating suit land in any manner to third party. What is required to be considered is whether the trial Court while considering such an application has considered the relevant criteria for grant of injunction based on the material and evidence or not. While looking to the documentary evidence submitted by the evidence by plaintiff and responded by the defendant with respect to submission made by the plaintiff, it is not justified to consider at this stage the stand/defence taken by the defendant against the documentary submitted by the plaintiff. Under such circumstances, it transpires that plaintiff has strong prima facie case and balance of convenience also lies in his favour and if the suit property mentioned would be transfer, sale or in any manner by the defendant to other party then the plaintiff would suffer irreparable injury which cannot be compensated in terms of money. At the same time, if the injunction is not granted then the plaintiff will have irreparable loss and also requires to face

multiplicity of proceeding. Therefore, answer to the Issues Nos.1 to 3 accordingly as affirmative and in the interest of justice, following final order passed for the answer to Issue No.4 as hereunder.

**-:: O R D E R ::-**

- (1) Plaintiffs application of Ex.5 is hereby allowed.
- (2) The defendants are order to restrain from transferring the plot bearing Plot No.109, City Survey No.3184 ad-measuring 83.69 Sq.mt. which is situated at Village-Dhanera, Tal.Dhanera, Dist.Banaskantha to any other person in any what so manner and also restrain defendants to make any change in the record of the aforesaid property or restrain defendants to create any charge over the aforesaid property till the final disposal of the suit.
- [3] Cost of this application will follow the final order of the suit.

Pronounced in open court today, **on 14<sup>th</sup> September, 2018.**

Place : Deesa.  
Date : 14/09/2018

**( H. S. Khutwad )**  
Additional Senior Civil Judge,  
Deesa - GJ 00724.