

Order below Exh.5 Interim Injunction Application

Statement of the Application:-

1. Present application at **Exh.5** is moved by plaintiffs for interim injunction in respect of suit property by stating that suit property bearing old revenue survey No.116 and new survey No.114 which is given new survey No.454 recently and it bears account No.287. Its measurement is noted Acre.7-32 guntha at one place and in the second line of the application, its measurement is noted as Hec.Are.3-40-48 sq.mtrs. It is stated that the said land is used and in the possession of the plaintiffs. Plaintiffs had obtained electricity connection of 30 H.P. in 1998, but at present it is 58 H.P. Plaintiffs reside in the said field and they have constructed a house and shade for their pet animals and they reside there. Deft.No.2 has given a notice to plaintiffs on 5.5.2022 to disconnect the connection. It is stated in the notice that plaintiffs had asked connection in survey No.112, but it is in survey No.114. Survey No.112 & 114 are same and connection is legal.

1.2. It is further submitted in the plaint and interim injunction application that the suit land was received in mortgage by registered mortgage deed No.70/1956 for 90 years from its original owner late Mali Pratapji Devjiji. Gradually predecessors expired and at present plaintiffs are in possession. From 1965-66, bore exists on the place. By its use, plaintiffs cultivate in the field. Defts. gave application to deft.No.2 for disconnection of electricity connection. **By present application, surprisingly relief for permanent injunction and declaration are asked. It is noteworthy here that interim injunction application and plaint are ditto and verbatim. Reliefs asked by the suit are asked by the interim injunction application also. When this Court had asked for the query, Id.Advocate Mr.H.L.Prajapati did not reply anything in this respect.**

Submission by the Defendants:-

2. At Exh.19, deft.Nos.1/1 to 1/13 have submitted the written reply for the said application and suit. After denying the allegations, they have further submitted that present suit is filed by suppression of material facts. Plaintiffs have breached the condition of mortgage. They are trying to get the connection of electricity in their name. That is illegal. Plaintiffs have illegally constructed the bore in the land of defts. After making such submissions, they have requested to reject the application.

2.1. No reply is filed on behalf of deft.No.2 i.e. North Gujarat Electricity Co.Ltd. Hence, its right to file reply was closed.

Counter-affidavit :-

3. Plaintiffs have not filed counter-affidavit.

Documentary Evidences produced by the Parties:-

4. With the present suit, at Exh.4, plaintiffs have produced 14 documentary evidences. They are mainly registered mortgage deed of dtd.20.2.1956, village abstract form No.6, 8-A, 7 & 12, receipts of electricity company, notices, pedigree of parties and with the list of Exh.24, application submitted for electricity connection and yadi of service connection expenses are produced. Whereas on behalf of deft.Nos.1/1 to 1/13, abstract of 7 & 12 of survey No.454, mutation entry No.133, 2025, 2367, 40, 74, 96, 133, 134, 169, 535 & 87, village abstract form No.7 & 12 of survey No.451 & 114, abstract form No. 8-A of account No.198, 200 & 197,etc. are produced.

Arguments:-

5. Heard both the Id.Advocates of both the parties. Both the Id.Advs. have argued as per the facts stated above. Ld.Adv. for the plaintiffs has requested to allow present application. Whereas Id.Adv. for the defts. 1/1 to 1/13 has objected the same. Whereas no one has appeared on behalf of deft.No.2 i.e. Dy.Engineer, North Gujarat Electricity Co.Ltd.

Reasons and Appreciation:-

6. Present application is for interim injunction. Facts stated in the plaint are also noted in the interim injunction application. **Plaintiffs have filed present application for the ditto and verbatim reliefs stated in the plaint for permanent injunction and declaration.** In the application of interim injunction, relief asked is for permanent injunction. Even on behalf of deft.No.1/1 to 1/13, no objection is filed on record in this respect. As noted above, when this Court asked query to Id.Adv.Mr.H.L.Prajapati that how reliefs asked by plaint and interim injunction application are same, he has not replied.

7. The facts stated in written statement submitted by the defts. are supported with documentary evidences in which respect plaintiffs have not noted any fact in their plaint. The documetary evidences produced with the plaint does not constitute *prima facie* case of the plaintiffs in the case on hand. It is disputed that plaintiffs have made the procedure of

electricity connection and also bore-well in another survey Number, then that of noted in mortgage. Court Commissioner's panchnama is on record, but it cannot help at present stage when other evidences are not on record even to prove case *prima facie*. Plaintiffs have not produced even minimum evidences which are required to be produced at this stage also. The evidences produced till yet do not constitute any right or favour in favour of plaintiffs.

8. As noted above, facts submitted in plaint and interim injunction application are ambiguous and not clear at all. Deft.Nos.1/1 to 1/13 have not disputed the mortgage deed, but they have certainly disputed the place in which plaintiffs want to obtain electricity connection in their own names. If it is in respect of mortgage property, plaintiffs were to take permission and connection through defts. only and not by themselves showing themselves as the owner of the suit property. There are several legal infirmities in the present application and for that reason also, it is not tenable in the eyes of law.

9. From the above reasons and facts on record, it seems that without recording the entire evidence of both the parties, it cannot be decided whether present suit is filed with *bonafide* facts or not. From the evidences available on record till yet and also the submissions available on record till yet, it does not seem that plaintiffs have *prima facie* case. Neither balance of convenience is in their favour nor it can be believed that plaintiffs will have to suffer irreparable loss. Plaintiffs have to prove their *locus standi first* in respect of the right they have submitted for. Present application suffers material legal infirmities as noted above. Hence, this application deserves to be rejected.

10. In view of the above discussions, following order is passed under Exh.5.

O R D E R

- 1) Application at Exh.5 is hereby rejected.
- 2) No order as to costs.

Pronounced in the open Court today on 6th day of September, 2023.

Date:-06.09.2023
Deodar.

(Dr.Manjudevi Shardaprasad Pande)
Principal Sr.Civil Judge,
Deodar,District : B.K.
Code No.GJ:00860