

Regular Civil Suit No. 210/2022ORDER BELOW EXH.5**APPEARANCE :**

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Mr. B. B. Joshi:

Ld. Advocate for the Plaintiff

Mr. H. N. Chauhan:

Ld. Advocate (Legal Aid) for the Defendants

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1. **Main Dispute:** Herein the case, the plaintiff has alleged that the defendants are doing encroachment upon the common margin land of plaintiff i.e. Plot No.344, admeasuring about 42*30 Sq. Ft. and also having 125.41 sq. mts., situated in the Village : Rajapara No.2, Taluka : Talaja, District : Bhavnagar. (hereinafter referred to as "suit-property" in short). Further details of the suit-lands are as under:-

East Side:-

Government Waste Land

West Side:-

Government Waste Land

North Side:-

Government Waste Land

South Side:-

Common Road

The defendants have alleged that on the

contrary, plaintiff has illegally acquired government land and the defendants have not done any alleged encroachment.

2. Brief facts of the main suit as well as the present application are as under:-

2.1 That the plaintiff has legally purchased the suit-property from one Mr. Chauhan Savjibhai Tapubhai on payment of full consideration and stamp fees paid of Rs.3,100/- dated 13.03.1996 which was registered before the Ld. Sub-Registrar vide Sr. No.106. That as per the condition of registered sale-deed, the plaintiff is having easement rights upon 15 ft. common road at southern direction where at present the defendants are doing illegal encroachment without any information and permission of any government authority.

2.2 That the plaintiff has verbally requested the defendants to stop their encroachment but the defendants refused to do so. That the plaintiff has made several representation before the Ld. Talati cum Mantri, Ld. Sarpanch, Ld. Mamlatdar, Ld. TDO, Ld. Collector, etc., however, no legal action and no any steps have been taken against the defendants.

2.3 That there is common / public road at the southern side of suit-property and due to illegal encroachment being done by the defendants, the public wealth is invaded. That the plaintiff cannot travel and his easement right upon the suit-property is being violated.

3. The notice was served to the defendant. Ld. Advocate Mr. H. N. Chauhan (Legal Aid) appeared on behalf of the defendants and filed written statement vide Ex.12 & 13 wherein the facts and averments stated by the plaintiff in his plaint and present application have been denied. Further, in the written statement, it is contended that no cause of action has arisen to file such suit and present application Ex.5. It is contended that the plaintiff has no locus standie to file the present application and suit. It is contended that the plaintiff may be directed to prove the facts of the suit and present application Ex.5. It is further contended that the suit of plaintiff is barred by non-joinder and miss-joinder of parties. Finally, the defendants urged that the plaintiff has no prima facie case and balance of convenience is not in favour of

the plaintiff and stated that the plaintiff would not suffer any irreparable loss if the injunction is not granted.

4. The LA of plaintiff has filed rejoinder affidavit vide Ex.19 and also filed written arguments vide Ex.22 and argued as per the plaint. The LA of defendant has argued as per the written statement filed by him.
5. Perused the arguments advanced by both the sides. To avoid repetition of the arguments, they are discussed at the later part of the judgment. Considering the above facts, the following issues are necessary for the determination of present application under order 39 rule-1,2 of The Civil Procedure Code:-
 1. Whether the plaintiff proves his prima facie case?
 2. Whether balance of convenience is in favour of plaintiff?
 3. Whether irreparable injury or loss will be caused to the plaintiff if an injunction as prayed for is not granted?
 4. What order ?

6. My findings to the above issues are as under:

1. In partly affirmative.
2. In partly affirmative.
3. In partly affirmative.
4. As per final order.

<u>-: REASONS :-</u>

Issue no. 1 to 3 :-

7. In order to avoid the repetition of the facts as well as the arguments of the parties, I have discussed the issue no. 1 to 3 together as under :

Before deciding the present application which is filed by the plaintiff under Order-39, Rule 1-2 of C.P.C., it is necessary to consider the three essential ingredients and golden principles for grant of injunction are present or not. These three principles are (i) the existence of a prima facie case (ii) Balance of convenience and (iii) Irreparable loss and injury. It must exist as a chain. If there is a one missing link in the chain then the injunction cannot be granted, even in granting an ex-parte order of injunction, a Court is duty bound to give reasons and on this point the law has been

laid down by the Hon'ble Apex Court. Now keeping in mind the ratio laid down by the Hon'ble Apex Court in the case of **Maria Margardia Sequeria Fernandes and Ors. which is reported in AIR 2012 SC -1727.** Hon'ble Apex Court has held that *"it is duty and obligation of the Court to critically examine the pleadings and documents and pass an order of injunction while taking pragmatic realities."*

8. Now, with this back ground, if we peruse the averments made in the plaint as well as in the present application, it appears that the plaintiff has filed the present suit for partition, declaration and for permanent injunction in respect of the suit-property.

8.1 Considering the plaint of the plaintiff, it prima facie appears that the plaintiff has purchased the suit-property vide registered sale-deed No.106 on 13.03.1996. This fact is supported by the Mark 4/1 & 4/2. As per say of the plaintiff, the defendants are doing illegal encroachments at the southern side of suit-property due to which the easementary right of plaintiff is being violated. As per the say of defendants they have done legal construction work at their

owned property and there is no any correlation of the same with the suit-property. It is also alleged by the defendants that the plaintiff has filed the present suit with malafide intention and with a view to harass defendants.

8.2 Prima - facie perusing the documents produced by the plaintiff 4/3 & 4/4, we may find that the plaintiff has approached various government authorities to resolve his grievance. Now, the question arise that whether the defendants have illegally made encroachment at the suit-property or they have done legal construction work at their owned property ?

On prima-facie perusing all the documents adduced before this court, herein provided, it appears that the plaintiff is owner and in possession of his property. However, prima facie the legality of the said documents would be decided after recording the evidence. Similarly, for the aforesaid question, it would be decided after recording the evidence that whether the plaintiff is entitled or not for the reliefs as prayed for or not. But right now,

the court has to protect the rights of the party who actually deserves it. Therefore considering the ratio laid-down in the case of **Dorab Cawasji Warden v. Coomi Sorab Warden and others (1990) 2 SCC 117,**

"The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm".

8.3 While perusing the facts raised by the plaintiff, in accordance with the above discussed judgment, no any party has to suffer any damage or harm on preserving the status quo of the last non-contested status

of the suit property.

Further, while considering the ratio laid down in the case of

" Gujarat Bottling Co. Ltd. and others v. Coca Cola Co. and others (1995) 5 SCC 544 at 574, the Apex Court has highlighted that:-

'The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies.'

9. Moreover, looking to the entire records of the case, I am of the opinion that at the

time of deciding the present application which is in nature of interlocutory kind of application, it is not desirable to evaluate evidence produced by the parties but at this juncture, a Court can only prima-facie peruse the documents and on the basis of this, Court can find out whether the prima-facie case is made out or not ? and therefore, on the back drop of the legal provisions of Order-39, R-1 & 2 of C.P.C. and the ratio laid down by the Hon'ble Apex Court in their numbers of judgments, at this stage, prima-facie it is not clear that whether the defendants have done illegal encroachment or the easementary right of plaintiff is being violated. **At this juncture, it is pertinent to protect the right of each of them and to avoid the multiplicity of legal procedure. Therefore, at the time of deciding this application, I am of the opinion that no party has made out their prima facie case in respect of the illegal encroachment.** Therefore, at this stage, the parties are required to maintain status-quo for the same. Therefore, I answer issue no. 1 to 3 in partly affirmative and pass following final order in respect to issue no.4.

:- ORDER :-

- i. The present application filed by the plaintiff vide Exh.5 is hereby partly allowed.
- ii. The plaintiff & defendants are hereby directed to maintain status-quo in respect of any kind of the construction or encroachment at the southern side of suit-property as mentioned in the suit of plaintiff till final disposal of the suit.
- iii. It is hereby clarified that no any parties be restrained from entering into the suit-property by any means.
- iv. Looking to the facts and circumstances of the case, there shall be no order on costs.

Signed and Pronounced in the open Court on this
09th day of January, 2025.

Date: 09/01/2025
Place: Talaja

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[CHANDRA SHEKHAR SHARMA]
Additional Civil Judge & JMFC
Talaja
UID : GJ01562