



**IN THE COURT OF ADDITIONAL CIVIL JUDGE,
GADHADA, BOTAD.**

PLAINTIFF:

MATRABHAI DAYABHAI SANIYA

VERSUS

DEFENDANT:

BHARATBHAI CHAGANBHAI CHAUHAN

APPEARANCES:-

For Plaintiff	:-	Shri C.R. Trivedi.
For Defendant	:-	Shri D.A. Malvaniya.

ORDER BELOW EXHIBIT-5

1. Factual Matrix:-

- 1.1. The plaintiff has filed this suit seeking declaration against the defendant that the defendant shall not restrict the plaintiff's easementary right of flowing of water from the plaintiff's property to the defendant's property.
- 1.2. Plaintiff has asserted that the plaintiff owns a property bearing survey number 20 situated at Sanjavdar Village of Gadhada. Further asserts that there was an

easementary right that the natural water of rain shall flow from the property of the plaintiff to the defendant's property.

1.3. Plaintiff asserts that the said fact has also been mentioned in the sale deed dated 12/05/1989 by which the plaintiff has purchased the said property.

1.4. Plaintiff asserts that the defendant has created obstruction by making dike/clog and therefore the natural water of rain which used to flow from the property of the plaintiff to the defendant's property, has started to flood and therefore the plaintiff is not able to cultivate his property

Hence this suit and the injunction application under Order 39 Rule 1, 2 of CPC and Section 151 has been filed.

2. Proceedings:-

2.1. After filing of the suit the defendant has appeared and vide Exhibit-37, filed a written statement.

2.2. Court Commissioner report and Map have been made vide order below Mark 10/3 and 10/4.

3. Relief Claimed in Exhibit -5 Injunction application:-

Following reliefs have been sought by the plaintiff:-

1. *To grant a temporary injunction against the defendant that he shall remove the ditch/clog and reopen the ditch/kennel which was used for the flowing of natural water of rain from the property of the plaintiff to the defendant's property;*
2. *To grant a temporary injunction against the defendant of awarding compensation arising out of the obstruction created by the defendant in the flow of the natural water of rain.*

4. Submissions:-

From the Plaintiff's Side:-

Learned advocate for the plaintiff has argued that:

- a. Plaintiffs own the property and also cultivating the property;
- b. When the property was purchased by the plaintiff it was mentioned in the sale deed that the natural water of rain shall flow from the property of the plaintiff to the property of the defendant;
- c. The plaintiff was enjoying this easement right since long;

- d. The defendant has created obstruction by making dike/clog and therefore the natural water of rain which used to flow from the property of the plaintiff to the defendant's property, has started to flood and therefore the plaintiff is not able to cultivate his property;
- e. Plaintiff has prima facie case;
- f. Balance of Convenience is in favor of the Plaintiff.
- g. If the injunction is not granted then the plaintiff shall suffer irreparable injury which would not be compensated in terms of money.

From the Defendant Side :-

Learned advocate for the defendant has argued and submitted that:-

- a. The plaintiff and the defendant does not have adjacent property and hence there is no such question of obstruction arises;
 - b. The plaintiff has sold the property to Sangabhai Bhayabhai Gamara and hence between the property of the plaintiff and defendant, property of Sangabhai Bhayabhai is there;
 - c. In the sale deed executed between the Plaintiff and Sangabhai, there is no mention of the property of the defendant;
 - d. There is no balance of convenience, Irreparable injury and prima facie case.
5. Upon perusal of the plaint, application vide exhibit-5, documents and upon hearing the arguments of the learned advocates for the parties and while considering the settled principle of law at this stage for adjudicating the present case, it is clear that entire merit is not required to be discussed and appreciated while deciding the Injunction application.
6. At this juncture before discussing further, I would like to discuss the Judgment of the Hon'ble Supreme Court in which the Hon'ble Supreme Court has observed that:

"5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favor which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question

*raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favor of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad-interim injunction pending the suit."*¹

(Emphasis supplied)

7. For granting the relief of the temporary injunction under Order 39 of CPC, the party has to satisfy three ingredients by sufficient evidence. As held by the Hon'ble Supreme Court,

"it is settled principle of law that mainly three ingredients as provided it means under Order 39 Rule 1 and 2 of the Code of Civil Procedure are required to be taken into consideration and for that the plaintiff has to prove his case prima facie by submitting sufficient evidence, then only the plaintiff is entitled for ad-interim injunction, but he must also prove other two ingredients which are, the balance of convenience is in favor of plaintiff and if the ad interim injunction is not granted in favor of the plaintiff, then he will have to suffer irreparable loss which cannot be compensated in terms of money. Further, it is also settled principle of law that all above ingredients are interconnected to each other and it is the duty of the plaintiff to prove all the three

¹ Dalpat Kumar Versus Prahlad Singh, AIR 1993 SC 276.

ingredients and if above three ingredients are proved by the plaintiff, then the plaintiff is entitled for ad-interim injunction.”²

(Emphasis supplied)

8. The plaintiffs have sought 2 reliefs out of which first is that the defendants shall remove the obstruction and reopen the ditch/kennel and the second is that the defendant shall compensate for the loss.

The second relief sought by the plaintiffs is of the type of Mandatory Injunction and for the purpose of seeking mandatory injunction as enshrined in the Section 39 of Specific Relief Act which is as follows:-

“39. Mandatory injunctions.—*When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.”*

Looking at the section it appears that if the court is capable of enforcing then the court may compel the performance of a certain act along with the prevention of breach of an obligation.

At this juncture, I would like to discuss the Judgment of the Hon'ble Supreme Court in which the Hon'ble Supreme Court has observed that:

“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, courts have evolved certain guidelines. Generally stated these guidelines are:

1. *The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.*

² Kashi Math Samsthan vs. Srimad Sudhindra Thirtha Swamy, AIR 2010 SUPREME COURT 296.

2. It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
3. The balance of convenience is in favour of the one seeking such relief."

*Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of judicial discretion."*³

(Emphasis supplied)

In case of the mandatory interlocutory application, a higher standard than a prima facie case is required. Generally the court can grant the relief of mandatory injunction in certain special circumstances. But in the present case, at this stage it can not be decided what amount of the loss if any caused to the plaintiff and the plaintiff himself has not specified any amount and also the said relief can be said to be final relief and hence after appreciation of evidence and the pleadings, it can be decided. Hence at this stage, the amount of compensation can not be decided.

9. Therefore, while considering the above facts and considering the circumstances in the case in hand following factors are to be satisfied:-

TRIPLE TEST

9.1. PRIMA FACIE CASE:

Prima facie case basically means "sufficient to establish a fact or raise a presumption".

Looking at the records, it appears that it is not in dispute that the property bearing survey number 20 was owned by the plaintiff. The plaintiff has vide Mark 4/1 to 4/4 has submitted the documents, by which it transpires that the property was owned by the plaintiff.

Further upon perusal of the sale deed it is specifically written that,

"સદરુ જમીનના ભોગવટા માટેનો રસ્તો છગનભાઈ ધરમશીભાઈની જમીનના આથમણા શેઢે થઈને છે અને સદરુ રસ્તો વેચાણવાળી જમીનના

³ Dorab Cawasji Warden vs Coomi Sorab Warden & Ors, 1990 AIR 867, Samir Narain Bhojwani vs M/S Aurora Properties and Investments, Supreme Court, Civil Appeal No. 7079 OF 2018.

ઉત્તર-પશ્ચિમ ખુલા સુધી છે. વેચાણવાળી જમીનમાં એકત્રિત થતા વરસાદના પાણીનો નીકાલ સદરકુ જમીનના ઉતરાદા શેઠે મુકેલ ઓગન દવારા પટેલ છગન ઘરમશીની જમીનમાં થઈને કુદરતી ઢાળ પ્રમાણે છે. તે સિવાય સદરકુ જમીનમાં અન્ય કોઈ શખ્સને કોઈપણ પ્રકારનો સુખાધિકારનો કે અન્ય કોઈ હક્ક નથી.”

Therefore looking at the sale deed, it appears that an easementary right was created mentioning that the flow of rain water is from the plaintiff's property to Chaganbhai Dharamshibhai's property (father of the defendant). Looking at the sale deed it was executed in favor of the plaintiff in 1989 and since then the plaintiff is alleged to enjoy easement right.

The defendant has also submitted document vide Mark 14/1 which is the sale deed executed by the plaintiff in favor of *Sangabhai Bhayabhai Gamara* and from this registered sale deed itself it transpires that a portion between the property of the plaintiff and defendant has been sold to *Sangabhai Bhayabhai Gamara*. Therefore the property of *Sangabhai Bhayabhai Gamara* seems to be between the plaintiff and defendant's property.

In the sale deed submitted by the defendant vide Mark 14/1, it is written that,

“વરસાદી પાણીનો નિહાર :-

આજરોજ તમોને વેચાણ આપેલ ઉપરોક્ત ખેતીની જમીનમાં કુદરતી વરસાદી પાણીનો નિહાર પૂર્વ બાજુના શેઠે દક્ષીણ બાજુએથી ઉત્તર તરફ પાણીનો નિહાર થાય છે. જે જગ્યાએ વેચાણ રાખનારે કે અન્ય કોઈએ અવરોધ ઉભો કરવાનો રહેશે નહીં. તેમજ આ વેચાણવાળી જમીનમાં ચોથાભાઈ ડાયાભાઈ સાનીયા નો કુદરતી વરસાદી પાણીનો નિહાર આવેલ છે.”

In this sale deed also it clarified that the flow of natural water shall be at the eastern side from South to North, which means that the flow of water shall be from the property of plaintiff first and then to the property of Sangabhai and then to the property of Defendant. Therefore in my opinion, the fact of flowing natural water of rain is mentioned in both the sale deeds.

Further at this stage, upon perusal of the court commissioner report which is at Mark 10/3 and 10/4, it is written that,

“વાદી તથા પ્રતિવાદી ની ખેતી ના જમીન ના શેઠે આશરે અડધા ફૂટ ઊંચાઈ ધરાવતો પાળો આવેલ છે. પ્રતિવાદી ની ખેતી ની જમીન માં કપાસ નું વાવેતર કરેલું છે. પ્રતિવાદી ની ખેતી ની જમીન 6 વીઘા છે. પ્રતિવાદી ના ખેત નું પાણી ન

*નિકાલ ઉતર તરફ શામજીભાઈ કાનજીભાઈ સોલંકી ની ખેતી ની જમીન માંથી થઇ
ને ગામ ની નદી માં નિકાલ થાય છે.”*

Therefore prima facie it appears from the sale deed submitted by the plaintiff as well as the defendant that the natural flow of water was there from the property of plaintiff to the defendant and from the report of commissioner, it transpired that there is dike between these property and which is half a foot higher and as per the report, in approximately 4-5 Bighas of property of plaintiff, there is a flood of water leading to no cultivation.

Therefore, without entering into the merits of the case in hand, I am of the view that the plaintiff has succeeded to prove that he is having prima facie case against the defendant for obtaining an injunction.

9.2. BALANCE OF CONVENIENCE:

Balance of Convenience, the balance of convenience basically means “to determine the party who would suffer greater harm/loss and that party would be said to be having a balance of convenience”. Looking at the facts, circumstance and case record it appears that the plaintiffs have alleged that there was a right of flowing of water and which has been mentioned specifically in the sale deed submitted by the plaintiff as well as defendant and because of the said dike, the water is flooded in the property of plaintiff and therefore there is no cultivation in the 4-5 bighas of plaintiff’s property. Hence at this stage without going into the merits and therefore the comparative mischief or inconvenience likely to be caused without granting injunction will be greater. Therefore I am of the view that the balance of convenience is in favor of the plaintiff.

9.3. IRREPARABLE INJURY

Irreparable injury basically means “an injury which is impossible to rectify”. Further considering the facts and circumstance of the case in hand, it appears that there was a right of flowing of water and which has been mentioned specifically in the sale deed submitted by the plaintiff as well as defendant and because of the said dike, the water is flooded in the property of plaintiff and therefore there is no cultivation in the 4-5 bighas of plaintiff’s property

therefore it appears that the plaintiff is irreparable injury which in my opinion would not be even capable of compensated in terms of money. If the injunction is not granted then it will cause irreparable injury to the right and interest of the plaintiff which can not be compensated in terms of money. Therefore the plaintiff is able to prove that if injunction as prayed is not granted then he shall suffer an irreparable loss which cannot be compensated in the terms of money.

10. Hence, in the view of all the above circumstances and satisfaction of all the three ingredients, the following order has been passed :-

-:: ORDER ::-

1. The present interim injunction application vide Exhibit-5 is partly allowed.
2. The defendant is hereby directed that he shall remove the dike (પાણી) made between the property of the plaintiff and the defendant and further directed that the defendant shall reopen ditch/kennel (ઓગાઉ) which was used for the flowing of natural water of rain from the property of the plaintiff to the defendant's property, till the pendency of the suit.
3. No order as to costs.

Pronounced and signed in open court today on the 3rd day of February, 2026 at Gadhada, Botad.

(RAVINDRA KUMAR)

Additional Civil Judge,

Gadhada, Botad

(Code No. GJ01713)