

ORDER BELOW EXHIBIT-5

1. Factual Matrix:-

- 1.1. The plaintiff has filed this suit seeking declaration that the defendant no. 2 has no right in the way attached to the shops which are taken on rent by the plaintiffs and also sought permanent injunction against the defendant no. 2.
- 1.2. Plaintiffs have asserted that all the plaintiffs have taken shops on rent in the *Gadhada Tower Chowk*. The Plaintiff No. 1 has taken shop no. 2 on 01/01/2003. Plaintiff No. 2 has taken shop no. 4 In 1997, Plaintiff No. 3 took shop no. 3 on rent on 01/01/2008 and Plaintiff No. 4 took a shop on rent near the stairs on 01/04/2008.
- 1.3. Plaintiffs have asserted that they are paying the rent and till 2008 they have paid rent to the original owner *Meman Rahimbhai Abdul Latifbhai* and the defendant no. 1.
- 1.4. Plaintiffs have asserted that there was a road in an open area attached to the shops and all the shop owners or the tenants of the shops were using it for the purpose of carrying goods in or out from their shops.
- 1.5. Plaintiffs have asserted that the Defendant No. 2 has locked the door of the said road and the plaintiffs are suffering from irreparable injury as the said

road was used for the purpose of transport of goods and now they can not carry the goods into the shops.

- 1.6. Plaintiffs have asserted that upon inquiry they got to know that the said property has been purchased by Defendant No. 2 from Defendant No. 1 in the year 2010.

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 No. 2 has appeared and vide Exhibit-22, filed a written statement.
- 2.2. For the Defendant No. 1, order for proceedings ex parte has been made.
- 2.3. Court Commissioner report and Map have been made vide order below Exhibit- 6.

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

The plaintiffs have filed this application seeking relief of temporary injunction against the defendants that the plaintiffs are in the legal possession of the shops and therefore the defendants neither by themselves nor by any other persons shall obstruct the possession of the plaintiffs and further sought that the Defendant No.

2 shall unlock the road and shall not again lock the road by themselves or by any other person.

4. Submissions:-

From the Plaintiff's Side:-

Learned advocate for the plaintiffs has argued that:

- a. Plaintiffs have taken the shops on rent from the father of Defendant No. 1;
- b. Plaintiffs are in legal possession of the shops and rent has also been paid by the plaintiff to the defendant no. 1;
- c. Plaintiffs are carrying the business in the above shops and the way which the defendant no. 2 has locked was being used by the plaintiff for carrying goods;
- d. The plaintiffs are entitled for the way even though the said shops have been bought by the defendant No. 2;
- e. Plaintiffs have prima facie case;
- f. Balance of Convenience is in favor of the Plaintiffs.
- g. If the injunction is not granted then the plaintiffs shall suffer irreparable injury which would not be compensated in terms of money.

From the Defendant No. 2 Side :-

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

- a. The said suit shall be filed under the Bombay Rent Control Act and hence barred by law;
 - b. All the shops alleged to be in the possession of the plaintiffs are at different different place;
 - c. Plaintiffs are not the lawful tenants of the shops;
 - d. Plaintiffs have not submitted any rent receipts;
 - e. The suit is bad because of Non joinder of parties;
 - f. The plaintiffs have never paid any rent to the defendant no. 2;
 - g. Land Grabbing proceedings have also been initiated against the plaintiffs;
 - h. The present suit is barred by the law of limitation;
 - i. There is no balance of convenience, Irreparable injury and no prima facie case.
5. Upon perusal of the plaint, application vide exhibit-5, documents and upon hearing of 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 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 neither by themselves nor by any other persons shall obstruct the possession of the plaintiffs and second is that the Defendant No. 2 shall unlock the road and shall not again lock the road by themselves or by any other person.

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

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

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 relief. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
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.

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:

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.

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

Looking at the documents submitted by the plaintiff vide Mark 4/1, it transpires that the name of “*Hakabhai Darji*” has been shown as tenant.

Vide Mark 4/2, it transpires that the name of “*Rajendra Sukhabhai*” has been shown as tenant. vide Mark 4/3 to 4/6, it transpires that the name of

“*Dineshbhai Sukhlalbai Vaghela*” has been shown as tenant. vide Mark 4/7,

it transpires that the name of “*Jivrajbhai Laljibhai*” has been shown as

tenant. vide Mark 4/8, 4/9 and 4/10, it transpires that the name of

“*Kalubhai Laljibhai*” has been shown as tenant.

It is not disputed by the parties that Defendant No. 2 has bought the property on 05/04/2010. It is alleged by the defendant no. 2 that the suit property has been bought by him 14 years ago and till date no rent has been paid to him and hence the plaintiffs can not be said to be the legal tenants and hence proceedings have also been initiated against them.

Looking at the facts and averments, it is not in dispute that the plaintiffs are in the possession of the shops and whether they are lawful tenants or trespassers can only be decided by the evidence.

Further the plaintiffs have also produced copy of sale deed vide Mark 4/11, by which it transpires that the *Mahmad Rafiq Rahimbhai Hasmani* has sold the property to Anirudhbhai Manharbhai Shekhva along with the tenancy rights in the suit property. Therefore prima facie it appears that the suit property in which the shops are there have been transferred to the defendant no. 2 along with the tenancy rights and the defendant no. 2 has admitted the said fact that the plaintiffs are in the possession but the rent has never been paid by them to the defendant no. 2.

Further the sale deed also mentions that there is a way attached to the shops and which shall be used by the tenants for the purpose of carrying goods and which shall not be obstructed.

Further Vide Mark 9/3, the court commissioner has submitted a report in which it appears that in the said shops, the plaintiffs are in the possession of the shops and carrying out the business.

Therefore, without entering into the merits of the case in hand, I am of the view that the plaintiffs have succeeded to prove that they are having strong prima facie case against the defendant no. 2 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 to be tenants in the shops and are also carrying out the business in the said shops and the court commissioner report also supports this fact. In my opinion when the sale deed itself mentions that the way attached to the shops are to be used by the tenants and which shall not be obstructed by anyone. The plaintiffs have submitted that the said way was being used by them for the purpose of carrying the goods and since the said way has been locked by the defendant no. 2 is causing them loss appears to be convincing 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 plaintiffs.

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 the said way was being used by the tenants for the purpose of carrying the goods and the fact has also been mentioned in the sale deed and hence further the sale deed also mentions that the said way shall not be obstructed by any one at anytime therefore if the injunction is not granted then it will cause irreparable injury to the right and interest of the plaintiffs which can not be compensated in terms of money. Therefore the plaintiffs are able to prove that if injunction as prayed is not granted then they shall suffer an irreparable loss which cannot be compensated in the terms of money.

10. Learned advocate for the defendant no. 2 has placed reliance upon the judgment of Hon'ble Supreme Court, Nasiruddin And Ors Vs. Sita Ram,⁴ But the said judgment is on different footing and discusses the aspect of limitation act and hence can not be said to be helpful for the purpose of deciding an application under Rule 1 and 2 of Order 39 and Section 151 of Civil Procedure Code, 1908.

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

⁴ AIR 2003 Supreme Court 1543.

:: ORDER ::-

1. The present interim injunction application vide Exhibit-5 is partly allowed.
2. The defendants are hereby directed that they shall neither by themselves nor by his agent, servant or any other persons, obstruct or prevent or resist the plaintiffs in their possession of the shops in the suit property until the disposal of the suit.
3. Further The Defendant No. 2 shall **Immediately** unlock the open road/way attached to the shop (ખુલ્લો ડેલી વાળો રસ્તો) and shall neither by himself nor by his agent, servant or any other persons, lock the open road/way attached to the shop (ખુલ્લો ડેલી વાળો રસ્તો) until the disposal of the suit.
4. No order as to costs.

Pronounced and signed in open court today on the 28th day of January, 2026 at Gadhada, Botad.

(RAVINDRA KUMAR)

Additional Civil Judge,

Gadhada, Botad

(Code No. GJ01713)