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Regular Civil Suit No. 36 of 2022

ORDER BELOW EXH.5

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- [1]** The plaintiffs have preferred an application seeking temporary injunction against the defendants below Exh. 5 under Order 39, Rule 1 and 2 of the Civil Procedure Code.

- [2]** The plaintiffs have filed present suit against the defendants for declaration and permanent injunction in respect to land admeasuring 93,601 sq.fts. Of Survey No.109 of village – Khuntaliya, Ta. Chhota Udepur (*hereinafter referred to as ‘the suit properties’ for the sake of brevity*). Alongwith the suit, the plaintiffs have also filed present interim injunction application and prayed to restrain the defendants and/ or their agents from disturbing the settled possession of the plaintiffs, till final disposal of the suit. The plaintiffs have submitted the documents vide Mark 4/1 to 4/9; 17/1 to 17/4 and 29/1 to 29/7 so as to support their claim for interim injunction.

- [3]** The summons and notice were been duly served upon the defendants and defendant Nos.1 to 4 had appeared through their learned advocate. Though served, defendant No.5 has not appeared before the Court. Defendant Nos.1 to 4 have filed their written reply vide Exh.11, wherein, the facts stated in the plaint has been denied in toto and it is further stated that Survey No.109 was originally of defendant No.5 and others, which was admeasuring 18,616 sq.mts., which was converted to NA land tenure in the year 1982. 3053.62 sq.mts. of land was sold to Bombay Minerals by registered sale deed on 24.11.1982; 1813.76 sq.mts. Of land was sold to Administrator of Foda Chips Industries on 30.10.1983; 941.37 sq.mts. Of land was sold to Foda Minerals on 11.08.1989; 1748.10 sq.mts. Of land was sold to Bombay Minerals on 01.05.1988; 2346 sq. mts. Of land was sold to Hasinabibi Yakub Khota on 20.02.2002; and 8265.44 sq.mts. Of land was sold to defendant Nos.1 to 4 on 30.09.2003. Subsequent thereto, Imran Ishak Chintaman had purchased 3053.62 sq.mts. &

1748.10 sq.mts. Land of Bombay Minerals and 2346 sq.mts. Of land of Hasinabibi Yakub Khota in the year 2022. Foda Chips Industries had sold its 1813.76 sq.mts. Of land to Madara Sherbanu Sarfaraz and Madara Afsanabanu Irfan in the year 2019. All the purchasers are having their possession over these properties since years. In the sale deed in favour of defendant Nos.1 to 4, plaintiff No.1 has remained as witness, as he being cousin. It is also stated that defendant Nos.1 to 4 had purchased 8265.44 sq.mts. Of land in the year 2003, but, the sale deed was pending for the deficit stamp duty as per Section 32(a) and it was released in the year 2010. The Government taxes of defendant Nos.1 to 4 had been paid in the name of plaintiff No.1 and therefore, the plaintiffs are misusing that fact. It is also stated that defendant Nos.1 to 4 have purchased 8265.44 sq.mts. Of land and the plan was passed by Town Planner, Vadodara and, after deducting common space and road space, defendant Nos.1 to 4 are having 4717.38 sq.mts. Of land and therefore, the claim of 93,601 sq.fts. Of land of plaintiffs is not tenable. It is also stated that plaintiff No.2 is not having any land there, as he had already sold his 941.37 sq.mts. Of land on 01.04.2022 to Mohsin Mohammad Khalpa by registered sale deed No.191. Likewise, 1813.76 sq.mts. Of land was sold to Madara Sherbanu Sarfaraz and Madara Afsanabanu Irfanbhai and that fact has been suppressed by the plaintiffs. It is further stated in the reply that defendant No.5 had filed RCS No.72 of 2003 against plaintiff No.2, which was dismissed on 30.06.2004 for want of non-production of evidence and the plaintiffs cannot be benefited therefrom, as it was not the decision upon the merits of the case. Moreover, defendant Nos.1 to 4 have also stated that the plaintiffs after filing present suit, wrongfully given the public notice in the newspaper on 21.12.2022, claiming his possession over the suit property. These defendants have prayed to reject the suit with costs. Defendant Nos.1 to 4 have relied upon the documents produced by them vide Mark - 12/1 to 12/8.

- [4]** The plaintiffs have filed the rejoinder vide Exh.15, wherein, all the facts stated in the reply has been denied and it is further stated that the plaintiffs are in possession of the suit property since last 35 years and defendant Nos.1 to 4 are residing far away from the suit property. It is also stated that defendants have stated the measurement of their land in sq.mts., whereas, the plaintiffs have shown the measurement in sq.fts.
- [5]** The plaintiffs have submitted their written arguments vide Exh.27, wherein, it is argued that the plaintiffs are having possession of the suit property i.e. 93,601 sq.fts. Of land of Survey No.109, since last 35 years and they are using the same for their business purposes. It is also heavily argued that as the plaintiffs are enjoying the suit property openly, peacefully and without any interruption, the plaintiffs have also given the application to the Revenue Authority to enter their name. Learned advocate for the plaintiffs has also argued that defendant No.5 had filed the civil suit being RCS No.72 of 2003, in respect to the suit property in the Court of Principal Senior Civil Judge against the plaintiffs and that suit was rejected. It is also contended that on 16.11.2022, defendants threatened to dispossess the plaintiffs, they have to file present suit and application. It is also argued that pursuant to the application by the plaintiffs, the Panchnama and Map has been prepared by the Court Commissioner; and as the plaintiffs are in peaceful possession of the suit property since last 35 years, all three celebrated principles, granting injunction favour the plaintiffs and therefore, the injunction as prayed for is required to be granted.
- [6]** *Per contra*; learned advocate for the defendant Nos.1 to 4 have submitted that perusing the pleadings of the plaintiffs carefully the plaintiffs have not claimed ownership over the suit property anywhere. If the plaintiffs are claiming the possession of 35 years, they have to establish it by sufficient documentary evidence, but, there is no single material to show the same. As per the Panchnama and Map, the suit property is open land and therefore, the

possession thereof can be said to be of the registered owner, and admittedly the plaintiffs are not the registered owner of the suit property. It is argued on behalf of defendant Nos.1 to 4 that they had purchased the property in the year 2003 by registered sale deed and as there was dispute of stamp duty, the registration deed was released in the year 2010. It is also argued that the plaintiffs have already sold their land to one Mohsin Khalpa and therefore, they are not having any property in Survey No.109 of Village - Khuntaliya. Moreover, it is argued on behalf of defendant Nos.1 to 4 that defendant No.5 had filed the suit against the plaintiffs, but, it was dismissed and not decided on the merits of the case. It is also argued that plaintiff No.1 is cousin of defendant Nos.1 to 4, and when the sale deed in favour of defendant Nos.1 to 4 was executed in the year 2003, plaintiff No.1 was the witness to that sale deed, even though, the plaintiffs have filed this suit just to harass the defendants. These defendants have prayed to reject the application with costs.

- [7]** Before discussing the factual aspects of the matter, certain legal provisions and settled law with regard to temporary injunction are required to be taken into consideration. The Honorable Supreme Court as well as Hon'ble High Court by catena of decisions have laid down that the relief of temporary injunction may be granted after testing the facts, circumstances and evidences produced by the plaintiff upon the scale of following principles; (1) Plaintiff establishing a prima facie case; (2) Plaintiff showing irreparable injury to him on refusal to grant temporary injunction; (3) Plaintiff showing balance of convenience in his favour and that greater inconvenience will be caused to him if temporary injunction is refused; and (4) any other factors favouring the plaintiff. Granting an injunction is a matter of discretion and while exercising that discretion, the Court has to satisfy itself that whether the plaintiff actually has a 'triable case'. Before invoking the jurisdiction of the court to seek temporary injunction the plaintiff is bound to show that he has a legal right and the defendant is trying to invade that right.

Further, it is the settled position of law that the plaintiff has to stand on his own legs and the plaintiff cannot gain any benefit of the weakness of the defendant.

[8] I have perused entire record and considered rival submissions. Perusing the documents of the plaintiffs vide Mark 4/1 to 4/9; 17/1 to 17/4 and 29/1 to 29/7, it does not appear anywhere that the plaintiffs are owner of the suit property. Further, it is not the case of the plaintiffs that they are having any kind of ownership over the suit property. The plaintiffs are claiming that they are in possession of the suit property for last 35 years and therefore, their possession is required to be protected. None of the documents produced by the plaintiffs show that they are in possession of the suit property. Moreover, the plaintiffs have produced the affidavits of neighbours to the suit property, who has stated that the plaintiffs are enjoying the possession, and defendants are not in possession of the suit property, but, these witnesses have not stated that for how much period the plaintiffs are holding the possession. Furthermore, at this stage mere affidavits of some of the neighbours cannot be believed for the possession of the suit property.

Not only that any of the documents of the plaintiffs does not show the existence of 93,601 sq.fts. Of land of Survey No.109 of village – Khuntaliya. In that facts of the case, I don't see a prima facie case in favour of the plaintiffs. The plaintiffs have produced the copy of the order passed in RCS No.72 of 2003, but, perusing that order, it does appear that defendant No.5 had filed the suit against the plaintiffs, which was dismissed and not decided on merits. Therefore, dismissal of that suit; in no way helpful to the plaintiffs. Moreover, mere a statement that the plaintiffs are in possession of the suit property is not at all enough to grant injunction. There is no material produced by the plaintiffs to show that they are in actual possession for whatever times. Therefore, I don't see the factor of balance of convenience and irreparable loss in favour of the plaintiffs. Hence, as none of three celebrated principles of granting injunction favour the plaintiffs, I pass the following order:-

:: O R D E R ::

- ◆ The interim injunction application of the plaintiffs is rejected.
- ◆ Cost will follow the final decision of the suit.

Pronounced and signed in the open court today i.e 23rd day of September, 2024.

Date : 23.09.2024
Place : Chhota Udepur

[PATEL MITESHCHANDRA VINODKUMAR]
Additional Senior Civil Judge, Chhota Udepur
GJ01047

Regular Civil Suit No.36 of 2022

-: ISSUES :-

1. Whether the plaintiffs prove that they are in possession of the suit property since last 35 years ?
2. Whether the plaintiffs prove that they are entitled for declaration and permanent injunction as prayed for ?
3. Whether the plaintiffs prove that they are entitled for any other relief ?
4. What order and Decree ?

Date : 23.09.2024
Place : Chhota Udepur

[PATEL MITESHCHANDRA VINODKUMAR]
Additional Senior Civil Judge, Chhota Udepur
GJ01047