

**:: Order Below Exhibit 5 ::**

1. The present application is preferred by the plaintiff seeking interim injunction under order 39 Rule 1 & 2 restraining the defendants from carrying out any construction or creating any third-party rights over the suit property during pendency of the suit. The plaintiff contends that the property bearing City Survey No. 701 and Municipal Assessment No. 9944, ad measuring 47.23 sq. meters, situated at Kapuri Vas, village Mansa, Taluka Mansa, District Gandhinagar, is owned and possessed by the plaintiff. The property is bounded by a public road towards east, house of Rawal brothers towards west, open road towards north and temple of Visat Mata towards south (Hereinafter referred as suit property).
2. It is the case of the plaintiff that the suit property originally stood in the name of her husband Bhikhabhai Mathurbhai Vaghri and after his death on 14-11-2009, the same came to be recorded in her name in government and semi-government records. It is further contended that the defendants are relatives of her deceased husband and initially were permitted to reside in a portion of the property out of goodwill. However, subsequently disputes arose, and though an amount of Rs. 50,000/- was earlier transacted, the same was returned and possession of the room was resumed by the plaintiff. It is further alleged that the defendants started harassing the plaintiff, and in the year 2023, without any right or authority, demolished part of the suit property and attempted illegal construction without permission of the municipality. Despite objections and police intervention, the defendants again started construction on 28-02-2023. It is further submitted that the defendants are attempting to alter the nature of the

suit property by raising construction and may create third-party rights, which would cause irreparable injury to the plaintiff and complicate the proceedings. Hence, the present suit and application have been filed seeking protection of possession of the plaintiff and therefore have requested that interim relief shall be granted.

3. The notice was served to the defendants and they filed a reply vide exh 12. The defendants have opposed the application by filing written objections. It is contended that the application is false, illegal and not maintainable. While not disputing the description of the property and relationship between the parties, the defendants have denied the allegations of harassment and illegal construction. It is their specific case that during the lifetime of the plaintiff's husband, one room of the suit property was sold to defendant No.1 on 07-09-2009 for consideration of Rs. 50,000/- through a written document, which they have produced and possession was handed over. It is further contended that since then, the defendants are in continuous possession and enjoyment of the said portion, and their names are reflected in municipal and electricity records. The defendants deny that any amount was ever returned and assert that the plaintiff has filed the present suit with malafide intention after increase in market value of the property. It is also argued that the balance of convenience lies in favour of the defendants who are residing in the property for a long time and any injunction would cause them irreparable loss.
4. Read the application and written arguments. Perused the records of the case. Heard learned Advocates appeared for the plaintiff and defendants at length. Based upon the averments made in the application and the written statement filed by the defendants, the following points arise for deciding this application:

- i. Whether the plaintiff has a prima facie case in their favor to grant a temporary injunction?
  - ii. Whether the plaintiff would suffer irreparable injury which cannot be compensated in terms of money, if interim relief, as prayed for, is not granted ?
  - iii. Whether the balance of convenience is in favor of the plaintiff?
  - iv. What order?
5. The answers to the above points are as under:
- i. In Affirmative.
  - ii. In Affirmative.
  - iii. In Negative.
  - iv. As per final order.
6. Reasons for arriving at the conclusion are discussed as under Points No; 1,2,3. As all the points are inter connected they are hereinafter discussed jointly for the sake of convenience .
7. At the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail. It is a well settled principle that the power is discretionary and is to be exercised on sound judicial principles. Keeping the aforesaid aspects in mind and considering the pleadings of the parties, if the facts of the case are examined, then, it is evident that the dispute between the parties revolves around the suit property. At the outset, for grant of temporary injunction under Order 39 Rule 1 and 2 CPC, the plaintiff is

required to establish a prima facie case, balance of convenience and irreparable injury.

8. Discussing precedents in this regard the orders of hon'ble courts are discussed below-

**Ashwin Kumar K. Patel Vs. Upendra J.Patel 1999 CJ(SC)90** - the trial Court held “that plaintiff was in permissive possession” as this was accepted by the owners. It held that a possessory right was sufficient to permit the plaintiff to have an order of temporary injunction in his favor. Therefore, without going into the validity of the agreements executed by the owners in favor of the plaintiff or defendants 15 and 28, or the validity of the sale deed executed by defendants 15 and 28, we are of the view that the trial Court was right in coming to the conclusion that the plaintiff has made out a prima facie case. ... It is, however, made clear that the findings relating to the rights of the parties, the title to the property or as to possession as given by the trial Court and as accepted by us are all tentative”. In **Manubhai Bhagabhai Patel Vs Cheebabhai Rambhai Patel 1995CJ(Guj)247** Hon'ble court has discussed “In view of the above said position of law, it is obvious that the Courts below completely misdirected themselves in focusing their attention and basing their decision entirely upon the legality of the plaintiffs' possession, even though the defendant was found neither to be in possession nor to have better title than the plaintiff. On these facts, it is obvious that the Courts have completely lost sight or have failed to appreciate the legal position that the plaintiff would be entitled to a relief against threatened dispossession by the defendant merely on the basis of the possession held by the plaintiff, irrespective of whether the plaintiff had title to the property or not. Even otherwise, both the Courts below lost sight of

*the fact that the legality of plaintiffs' possession is quite different from the legal title of the plaintiff to the property. It may well be that ultimately the plaintiff may fail to establish his claim to legal title to the property, or may even fail to establish a prima facie case at the stage of injunction application that he holds possession by virtue of legal title, nevertheless as long as the defendant cannot show better title than the plaintiff, the plaintiff would be entitled to an injunction against the threatened dispossession.*" The central theme evident in the aforementioned judgments is that the plaintiff's entitlement to interim relief was based on the successful demonstration of possession over the subject property.

9. In the present scenario as far as prima facie case is concerned, So far as prima facie case is concerned, it appears from the record that the suit property stands in the name of the plaintiff in the revenue and municipal records. The defendants have relied upon certain documents to assert their possession and alleged transaction. However, the validity of such documents, the alleged payment of consideration, and the nature of possession are seriously disputed and can only be adjudicated upon after a full-fledged trial. At this stage, the court is not required to record any conclusive finding on these aspects. The material on record discloses that there exists a triable issue between the parties regarding right, title and possession over the suit property. Hence, the plaintiff has succeeded in establishing a prima facie case for the limited purpose of interim protection. As regards irreparable loss, if the defendants are permitted to carry out construction or create third-party rights, it may result in irreversible changes and prejudice the rights of the plaintiff, which cannot be adequately compensated in monetary terms however the defendants will not suffer any such injury. Hence, this requirement is also satisfied in favour of the plaintiff.

**IN THE COURT OF PRINCIPAL CIVIL JUDGE, MANSA**

**RCS 15/2023**

10. Now regarding balance of convenience, it is pertinent to note that if construction is allowed to continue, the nature of the suit property may be altered, leading to multiplicity of proceedings. On the other hand, restraining the defendants from further construction would not dispossess them but merely maintain the status quo. Therefore, the balance of convenience tilts in favour of preserving the property in its present condition and not entirely in the favor of the plaintiff. Thus, considering the provisions of Order 39 Rule 1 and 2 CPC and the facts of the case, it is just and proper to pass the following order.

**:: ORDER ::**

1. The parties are hereby ordered to maintain Status quo of the property and title holder is directed not to to sell, mortgage, alienate, transfer, or create any kind of interest in property to any third person in any manner whatsoever.
2. No order as to costs.

Signed and pronounced in the open court at Mansa.

Date :- 05/05/2026

Place:- Mansa

**(Ms. Damini Dixit)**

Principal Civil Judge

Mansa

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