

REGULAR CIVIL SUIT NO. 135 OF 2020

ORDER BELOW EXH. 5

Advocates:

Mr. G.P.Gadhvi, Ld. Advocate for the plaintiff

Mr. V.J.Nayak, Ld. Advocate for the defendants

1). The present application is preferred by the plaintiff for ad-interim injunction against the defendants under Order 39 Rule 1 and 2 of the Civil Procedure Code.

2). The brief facts of the present application preferred by the plaintiff are that agricultural land bearing account No.1110, re-survey block/survey no.2896, old block/survey no.380/1A admeasuring 0-28-18 Hector-Are-Sq.Mts., Akar Rs.1.80 and re-survey block/survey no.2897, old block/survey no.380/2 admeasuring 0-02-10 Hector-Are-Sq.Mts., Akar Rs.0.20, situated at village Nardipur, Taluka Kalol, District Gandhinagar (for the sake of brevity herein after referred as 'suit property').

Earlier defendants were in need of Rs.15 lac and demanded from plaintiff and plaintiff has given him Rs.10,50,000/- and in lieu of borrowed amount, defendants have executed mortgage agreement without possession of suit land in favour of plaintiff, entry of the same is reflected in the village form no.7/12,

possession of suit land is with defendants and plaintiff is cultivating the suit land. As per conditions of mortgage deed, defendants have to return said amount within 8 months to the plaintiff but defendants fail to pay the same within stipulated time, so, plaintiff has issued notice on 08.06.2020 to defendants for recovery of said amount but defendants have not given any reply of the notice. Defendants are not found ready and willing to pay due amount to the plaintiff and if defendant will sell suit land to third party, it will create multiplicity of proceedings, so, plaintiff has filed the present suit.

Plaintiff has prayed that if injunction as prayed is granted in favour of plaintiff, then it will not cause any damage to the defendants. That plaintiff has prima facie case, so, injunction order may be granted as prayed for. It is prayed to restrain defendants from selling the suit land by himself or by servant, agents, assignees by passing injunction order in favour of plaintiff. It is prayed to restrain defendants from cultivating suit land to the plaintiff.

3). On presentation of suit as well as present application, summons - notice was issued against defendants and the same were duly served to the defendants. Defendants have appeared through their learned advocate and filed written statement vide

Exh. 17 and denied the allegations made in the application in toto except specifically admitted in it. It is submitted that in old Survey No. 380/1-A whose new Survey number is 2896 of revenue village Nardirpur, Kaluka Kalol, constructed the tubewell and defendant No. 1 had taken electricity connection in his name. It is further stated that defendants and plaintiff are cousin brothers. The plaintiff has asked loan of Rs. 50 lac from land development bank on the name of agriculture land tubewell and bank has informed to mortgage suit land as well as tubewell. It is further stated that tubewell as comes in the above Survey No. land is in the name of the defendant No. 1 and electricity connection is also his name but the bank has informed to electricity connection in the name of plaintiff, as per instruction of bank the plaintiff has taken signature of the defendants on stamp paper. It is further stated that in the mortgage deed regarding payment of amount no facts mentioned about cheque number and cash payment, therefore, it is crystal clear that the defendants with a view to help the plaintiff in obtaining loan, due to relation and keeping faith executed the said mortgage deed. Lastly, defendants have prayed to reject the injunction application with compensatory cost awarding to the defendants.

4). Plaintiff has filed counter affidavit vide Exh.18, wherein, he

is stict to the facts mentioned in the injunction application.

5). In support of his case, plaintiff has placed reliance on the documents produced vide list Exh. 3 i.e. Mark 3/1 to 3/9. A copy of motgage deed, legal notice as issued by the plaintiff and sent to the defendants by registered post AD. I have heard the arguments of learned advocate for the plaintiff. Defendants have submitted written arguments vide Exh. 21.

6). Considering the pleadings, documentary evidence, submission as advanced by the ld. advocate for the plaintiff and written arguments of defendants vide Exh. 21, for deciding the present application, the following points raised to decide the present application as follows :

- (1) Whether the plaintiff proves that he is having a prima facie case ?
- (2) Whether the plaintiff proves balance of convenience in his favour ?
- (3) Whether the plaintiff proves that if injunction as prayed is not granted then he will suffer an irreparable loss which cannot be compensated in terms of money ?
- (4) What order ?

7). My finding regarding the above issues are as follows :

- 1) In the affirmative
- 2) In the affirmative
- 3) In the affirmative
- 4) As per final order.

:- Reasons :-

Point No. 1, 2 & 3 :

8). I have perused the records and submissions of the learned advocate for the parties and documentary evidence produced herein. The plaintiff has prayed interim injunction under Order 39 Rule 1 & 2 of CPC, which is purely a discretionary power of the Court. This power has to be exercised by the Court fairly and equitably. Plaintiff must establish three ingredients, viz. prima-facie case, irreparable loss and the balance of convenience in his favour. In absence of any of three ingredients, the plaintiff cannot be held entitled for the interim injunction. It is well settled position of law that at the time of interim application, the Court should not evaluate all the evidence strictly as per the Law of Evidence. The aim of the interim application is to protect the suit property from probable obstruction or disturbance and to maintain it will till the legal rights are ascertained. Considering

all these settle principles of Law, this application is to be considered.

9). The plaintiff has relied on documentary evidence and submitted that defendants have executed mortgage deed of suit land produced vide Mark 3/1 in favour of plaintiff, wherein as per condition No. 2 defendants have borrowed Rs.10,50,000/- from plaintiff and mortgage the suit land with condition to return the said amount within 8 months from 30.08.2019, and if defendants fail in returning the said amount, defendants are bound to execute sale deed of suit land by deciding consideration amount as per market rate in favour of plaintiff. Looking to the acknowledgment slips produced vide Mark 3/6 to 3/9, it appears that defendants were served with the notice regarding suit land issued by plaintiff. Further while considering the facts as pleaded and averred by the plaintiff, he came with the specific facts that he has given Rs.10,50,000/- to the defendants with conditions to return the said amount within 8 months, and if defendants failed in returning the said amount within stipulated time, defendants have to execute sale deed of suit land as per market rate. Defendants failed in returning the due amount to the plaintiff within prescribed period. Plaintiff has legal and lawful interest in the suit land. Further on careful consideration of the facts, from

that it is clearly and ostensibly transpires that defendants have executed conditional mortgage deed of suit land in favour of plaintiff, which is on record vide Mark 3/1 and as discussed defendants have not returned due amount to the plaintiff. Therefore, considering the above facts and circumstances, plaintiff is having right, interest in the suit land. Therefore, considering the above facts and circumstances, I am of the view that the plaintiff has proved his prima-facie case. Hence I answer the point No. 1 in the affirmative.

The plaintiff has shown the Court which kind of loss he has to suffer if the application is refused. Injury will be regarded as irreparable where there exists no certain pecuniary standard for measuring damages or where it is beyond the possibility of repair. It would not be possible to be compensated in terms of money if the defendants sell the suit land to the third party then it could be said without any hesitation that the plaintiff will enter into multiplicity of litigation. Not only that even there is reasonable apprehension of alienation of suit land. Hence, there is irreparable loss to the plaintiff.

The plaintiff has stated that how the balance of convenience is in his favour. The plaintiff has shown what kind of inconvenience, he has to face, if the interim relief is not granted to him. Hence, the plaintiff has satisfied the Court balance of

convenience in his favour.

Considering the above discussion, I answer issue No. 1, 2 & 3 as affirmative. Hence, I pass the following order in the larger interest of justice as follows :

ORDER

1) The ad-interim application as filed vide Exh. 5 by the plaintiff is hereby ordered to be allowed.

2) The defendants themselves and their agents, power of attorney, men, servants, assignees are hereby restrained to transfer, assign, alienate, create right of any third person, agent, servant, men, power of attorney from the suit land and maintain the status-quo till final disposal of the suit.

3) The defendants themselves and their agents, power of attorney, men, servants, assignees are hereby restrained from preventing plaintiff from cultivating the suit land.

4) Order of cost will follow final decision of the suit.

Signed and pronounced in the open Court today on 30th day of November, 2022.

Date : 30.11.2022

Place: Kalol

(Prem Hansraj Singh)
Principal Senior Civil Judge,
Kalol
(Code No.GJ 00746)

/pbshah/