

REGULAR CIVIL SUIT NO. 240 OF 2021

ORDER BELOW EXH. 5

Advocate:

Mr. S.L.Thakor, Learned Advocate for the plaintiff.

Mr. S.M.Patel, Learned 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 and as per Section 151 of the Civil Procedure Code.

2). The brief facts of the present application preferred by the plaintiff are that she is living with her mother, studied in 12th standard and defendant No.1 is her uncle and defendant No.2 is uncle's son; that property i.e. Flat bearing City Survey No.2218 in non-trading association, nagarpalika property bearing No.4/14/121/2/10 situated in Virat Apartment, Flat No.103, admeasuring 70.00 sq. mtrs., situated at Kalol, Taluka : Kalol, District : Gandhinagar and another property i.e. shop in Virat Apartment, ground floor (in the complex), property bearing No.4/14/121/2/4, shop No.4 admeasuring 40.00 sq. mtrs. situated at Kalol, Taluka : Kalol, District : Gandhinagar (For the sake of convenience and brevity, said property hereinafter referred to as 'suit property').

That marriage between mother of plaintiff viz. Patel Niruben Keshavlal solemnized with plaintiff's father viz. Patel Govindbhai Dahyabhai on 11.02.2000, plaintiff born on 08.10.2003 out of the said wedlock; that divorce took place between the plaintiff's mother and father on 11.08.2011; that plaintiff's father Govindbhai died on 06.02.2016; that plaintiff's mother Niruben has remarried with one Patel Ashokbhai Motilal.

That Govindbhai Dahyabhai Patel has purchased suit property from his self-income and registered in his name; that after the death of plaintiff's father, defendant No.1 came to live with plaintiff in suit property i.e. Flat; that after sometime, defendant No.1 and defendant No.2 have made conspiracy to grab suit property, so, from 28.05.2017, plaintiff lived with her mother at her home; that from 28.05.2017, defendants have left the plaintiff from the suit property i.e. Flat and took illegal possession over the suit property; that defendant No.1's application for adoption of plaintiff came to be rejected on 07.06.2017; that defendants have taken the documents of suit property and inspite of asking to return it, not returned; that when plaintiff was minor, at that time, by creating false resolution regarding suit property, defendant No.1 has entered

his name in the ancestral property; that defendants have tried to sell the suit property as well as other property, so, plaintiff has published public notice in daily newspaper on 06.10.2020 against it; that defendants have made cheating and fraud regarding suit property as well as other ancestral property, so, plaintiff has filed complaint on 13.10.2021 under Land Grabbing Act against defendants; that defendants are trespasser in the suit property; that defendants have threatened the plaintiff to kill or kidnap her, if she try to stop defendants from selling or renting the suit property; that defendants have threatened the plaintiff that they will kill her if she comes to take possession of suit property.

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 declare defendants are trespasser of suit property and to declare defendants have no right to keep possession of suit property.

It is prayed to order the defendants to hand over the possession of suit property to the plaintiff.

It is prayed to restrain defendants their men, agents, servants from mortgaging, transferring, assigning, selling, gifting, handing over possession making any change in the record of suit property by any way by passing injunction order in favour of plaintiff.

3). On presentation of suit as well as present application, summons - notice was issued against defendants and the same was duly served to the defendants and defendants appeared and filed reply vide Exh.11, wherein, they have denied the averments made in the plaint at Exh.1 as well as Exh.5 except specifically admitted in it. It is contended that suit is barred by provisions of law. It is contended that customary divorce deed executed between plaintiff's mother and father, at that time, all the responsibilities of plaintiff took by defendant No.1, it is clear from the page No.3, Para No.3 and Page No.3, Para No.4 of customary divorce deed that plaintiff's mother Niruben has no right, title, interest over the properties of defendant No.1's brother and defendant No.2's uncle and no proceeding will be initiated for it, inspite of the same, plaintiff has filed the present suit in provocation of her mother. That family members of defendant No.1 are not joined as party in the suit, so, suit is

barred by mis-joinder of parties. Defendants have lastly prayed to reject the suit as well as injunction application.

4). Plaintiff has placed reliance on the documents produced in the record vide list Exh. 3, Mark 3/1 to 3/27, vide list Exh.14, Mark 14/1, vide list Exh.15, Mark 15/1. Defendants have produced documents in the record vide list Exh.12, Mark 12/1

5). Learned advocate for the plaintiff has submitted written arguments vide Exh.13. I have heard the arguments of learned advocate for the defendants.

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

- (1) Whether the plaintiff proves that she is having a prima facie case ?
- (2) Whether the plaintiff proves balance of convenience in her favour ?
- (3) Whether the plaintiff proves that if injunction as

prayed is not granted then she will suffer an irreparable loss which cannot be compensated in terms of money ?

(4) What order ?

7). My findings 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 made by the parties. 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 her 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 till the legal rights are ascertained. Considering all these settled principles of Law, this application is to be considered.

9). The plaintiff has emphasized upon Mark 3/5, which is death certificate of Govindbhai Dahyabha Patel, Mark 3/9, which is customary divorce deed between Patel Niruben and Patel Govindbhai, Mark 3/8, which is pedigree of Patel Govindbhai Dahyabhai, who died on 06.02.2016, it appears that plaintiff is only legal heir of Govindbhai, Mark 3/8, which is a document dated 24.04.2002 issued by Virat (Kalol) Association, it appears Patel Govindbhai Dahyabhai is owner of the suit property, Mark 3/2 and 3/3, which are electricity bill of suit property running in the name of Patel Govindbhai Dahyabhai, Mark 3/4, which is property tax bill of suit property, wherein, name of Govindbhai Dahyabhai Patel is running as owner. Hence, it appears that name of Patel Govindbhai Dahyabhai is running as owner of the suit property and plaintiff being only legal heir of Patel Govindbhai Dahyabhai, there is prima-facie case of plaintiff.

The plaintiff has shown the Court which kind of loss she 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. Hence, there is irreparable loss to the plaintiff.

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

10). It is to be noted that at this juncture the court has not to decide on the rights of parties but at this stage the court needs to ascertain the prima facie case findings, which are indicative from the documents itself. The other object of the interim injunction is, to protect the plaintiff against injury by violation of her right for which she could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in her favour at the trial.

11). Having perusal of entire material produced for the inspection of court, it appears that the suit property is required

to be protected.

POINT NO. 4 :-

12). In view of the above discussion, I pass following order in the interest of justice;

:O R D E R:

[1] Application Exh. 5 preferred by the plaintiff is hereby partly allowed.

[2] Defendants, their men, agents, servants etc. are restrained from mortgaging, transferring, assigning, selling, gifting, handing over possession over the suit property by any way to anybody.

[3] No order as to cost.

Pronounced in open court on 8th day of February, 2024.

Place: Kalol-Gandhinagar
Date : 08.02.2024.

(Vatsal Hareshbhai Thacker)
3rd Addl. Civil Judge,
Kalol-Gandhinagar
(UIC: GJ01696)