

Sp.C.S.No.41 of 2017

Order below application Exh-5

(1.0) Present application is filed by the plaintiff for interim injunction under 0.39 R.1,2 of C.P.Code. Heard Ld. Advocate Mr.M.G.Naqvi for the plaintiff and Ld. Advocate Mr.R.G.Joshi for the defendant no.1 to 4 as well. Also, going through the pleadings of the parties as well the documents produced in their support.

It is pertinent to note that no one argued on behalf of defendant no.5 Nalia Mandvi Gram Panchayat.

(2.0) Plaintiff's submission:

Ld. Advocate Mr.Naqvi vehemently argued that present suit is filed for declaration and permanent injunction. The suit properties are residential plot no.23,24,25 & 26, comprised in R.S.No.20/1/4 Hac.Are.Sq.mtr.00-78-51, situated at village Nalia Mandavi, Ta.Una. It is argued that defendants agriculture land is adjoining to the plaintiff's land. Originally R.S.No.20/1/4 is agriculture land but plaintiffs have converted it in to non agriculture one, plans were passed and scheme of total 36 plots is announced. Suit land i.e. four plots mentioned above are adjoining to the land possessed by the defendant. Defendants have made encroachment in all the four plot. Though there was compromise between the parties when the dispute first arose that they got the

land measured by the government surveyor and whatever the finding of the measurement will bind upon them, but defendants are reluctant to follow the measurements and do not vacate the encroached area hence, file the present suit for getting the encroachment removed. Mean time, by preferring the present application it is prayed that defendant be restrained from making further construction on the plots, alienating the suit property and making charge over the suit property during the pendency of the suit.

It is further submitted that the plaintiff is having prima facie case. The documents showing the title and the revenue record is produced. Copy of the order converting the nature of the property from agriculture to non agriculture one is also produced. The plans passed by the authority is produced which is prima facie shown the title of the plaintiff. Copy of the Police complaint, copy of compromise agreed between the parties also there. The measurement and map prepared by the surveyor is also there showing that area of suit plots are encroached. Defendant is trying to make construction on the suit plots and if they are not prevented, purpose for filing the suit will not survive. Therefore the balance of convenience is also in favour of the plaintiff, irreparable loss may

also cause to the plaintiff as the suit property is immovable one. Hence, prayed to grant the application.

(3.0) Defendant's submission:-

It is vehemently argued by Ld. Advocate Mr. R.G.Joshi on behalf of the defendants that for getting the relief of equity the person must come with clean hands. Herein the case, the plaintiffs do not have the title of the suit property. The way in which plaintiffs claim ownership is totally illegal and without force of law. It is further submitted that the suit land is agriculture land given by the state to one priest of the temple for maintenance of himself and for temple. Priest bequeathed the property to the fore fathers of the plaintiff who are not agriculturist. Therefore, the base of the title of the property is illegal hence, the plaintiff could not acquire title.

(4.0) R E A S O N S :-

4.1 The application for injunction is equitable relief. While deciding such application the Court expects that the person who wants equity must do equity and must come with clean hand. Further, in so many words the three golden rule is appreciated time and again by Hon'ble the Apex Court and our High Court that there must be three elements in favour of a person who ask injunction in his favour, i.e.

Prima facie case, Balance of convenience and Irreparable loss.

4.2 To show the prima facie case the plaintiff has produced revenue record of the suit property is produced vide Exb-4 list. The defendants have also produced revenue record vide list Exb-21 which is more significant. The revenue entries showing that originally the suit property belongs to the state, which was given to Late Narayan Prasad Guru Chhotalal on payment of 20 times of the assessment on Dt.3.2.1956 **(mark-21/2)**

Thereafter, revenue entry no.734 showing that suit property was bequeathed in favour of Late fore father of plaintiff Mr. Ram Nathu Kharwa. The entry was made on 15.12.1974. **(Mark-21/4)**

Entry no.1565 is the entry showing the entry of succession on the death of Ram Nathu Kharwa. **(Mark-21/5).**

Entry No.2476 is also regarding succession entry on the death of Mr. Kishorbhai S/o Ram Nathu Kharwa. Present plaintiffs are legal heirs of Kishorbhai, whose name were entered in the revenue record, wide this entry. **(Mark-21/8)**

4.3 In the above course of transaction, the land passed on up to the present plaintiff. Plaintiffs got the land converted in to non agriculture. The order of the revenue authority

is produced by the plaintiff vide **Mark-4/4**. Plans were passed by the authorities. Map showing the plots is produced vide **Mark-4/5**. Therefore, it prima facie shown that how the plaintiff got the title of the suit property. while observing so, we are mindful of the law that revenue entry does not confer any title. Herein this case the defendants have produced nothing to show their title. On the other hand the plaintiffs have produced the entries showing how he got the title of the property. On the contrary defendants claiming adverse possession over the suit property on the ground that they have their property adjacent to the suit plots and they are having old structures at the place which are more than 80 years old. But defendants have not produced any revenue record showing the title of the adjacent land. So, the case of the plaintiffs is on better footing comparing the defendants.

4.4 Furthermore, the revenue entries by which the plaintiffs claiming title of the properties are not challenged or if challenged, yet, no entry is cancelled. Therefore, also the plaintiff is having prima facie case. One more thing required to mention that the main agitation of the defendant is on the point that Ram Nathu Kharwa was not agriculturist, therefore, titled could not be passed on to him

by Will. Therefore, if the transaction by will is illegal, then plaintiffs do not get any title. The argument is attractive, but it lost significance because almost more than 45 years passed since the entry is made in the revenue record. Further nothing is shown by the defendant that Ram Nathu was not an agriculturist. Entries made for Will is not challenged, if challenged, not produced before this Court. Moreover, now the land become non agriculture, therefore also it lose significance.

4.5 One more significant fact is the communications between the parties which are produced by the plaintiff vide Mark- 4/6, 4/8, 4/10, showing that the plaintiff has agitated by issuing notice to the defendants regarding the encroachment on the suit plots. Criminal complain is also filed by the plaintiff against the plaintiff.

4.6 It is pertinent to note here that document vide **Mark-4/9** is very important, showing that there are agreement between the parties that they will get the land measured by the government surveyor and both will follow what the measurement shown by the surveyor. Defendants denied the document that it was got signed by pressures through Police. The argument cannot be believed while deciding

the application like the present one. Whether there was any pressure on the defendants or not will be decided after leading evidence, at this juncture the document Mark-4/9 is there having signature of the defendants. In the light of this document if we peruse the most important document, which is Map prepared by the government surveyor being appointed as court commissioner, produced vide Mark-25/2, specifically showing that there is encroachment in the plot no.23, 24, 25 and 26 of the holder of R.S.No.311, allegedly possessed by the defendant.

4.7 Therefore, in the light of all the documents, it appears that the plaintiff is having prima facie case. Balance of convenience is also in favour of the plaintiffs because if the defendant alienate the portion of the land which is alleged to be encroached, there occurs multiplicity of proceedings, for no reason. As the property involved in immovable properties irreparable loss may also cause to the plaintiffs if interim injunction is not granted.

4.8 It is pertinent to note the prayer asked in the present application. Plaintiffs are asking further alienation of the properties, with direction for not to create any charge of any third party in any way and further prayed

not to make further construction over the suit property, during the pendency of the suit. I am of the view that if the prayer is granted to the plaintiff, there is no harm to the defendants. Even if it be so, then also, plaintiffs are entitled to the relief.

4.9 I have also gone through the citation produced on behalf of defendants in the case of **Mohd. Mehtab Vs. Khushnuma Ibrahim AIR 2013 SC 1099**, wherein Hon'ble Apex Court held that highest degree of satisfaction of Court is required when giving mandatory injunction. Here in the case on hand, we are not passing any mandatory injunction, only we are passing the order for preserving the properties till the final outcome. Other judgement in the case of **Bhimabai Mahadeo Vs. Arthur Import and export co. AIR 2019 SC 719**, Hon'ble Apex Court has held that revenue entry do not confer any title, as discussed above, we have also followed the ratio. We don't say that revenue entry confer title, but plaintiffs have atleast shown revenue entries in support of their claim but the defendants herein do not have even revenue entry to so some prima facie case. In the third judgement in the case of **Ambalal Sarabhai Vs. KS infrastructure Ltd. AIR 2020 SC 307** Hon'ble Apex court relied on the ratio in the case of Motilal Jain wherein it is held

that if delay is there in preferring the suit, it would also be consider while deciding the suit. In the present suit is seems that plaintiff has issued notice in the year 2015, thereafter, filed police complains, parties entered in to compromise, executed agreement, then the plaintiffs have filed the suit when encroachment is not removed by the defendant, therefore, whatever the delay caused is explained well.

(5.0) In the light of the above discussion, I am of the view that the application deserves to be allowed, hence, pass the following order.

:: O R D E R ::

- 1.Plaintiff's application Exb-5 is hereby allowed.
- 2.Defendant no.1 to 4 are are hereby directed to maintain status quo, not to alienate the suit property in any way, not to create any charge and not to make further construction on the suit properties, i.e portion between plot no.23, 24, 25, 26 and R.S.No.311, till the final outcome of this suit.
- 3.Parties are at liberty to apply for local inspection for showing what is the exact position of the suit properties on today for avoiding further litigation for breach of above injunction order.
4. Cost of this application shall follow the final

decree.

Today pronounced in the open Court on April 1st, 2021.

Una

(Virendrasinh Gemalsinh Rana)

Principal Senior Civil Judge, Una

GJ00964