



ORDER BELOW EXHIBIT-05.

GJJM020010652024

- 1) This is an application filed by the plaintiff for seeking a temporary injunction under Order-39, Rule-1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 restraining the defendants from damaging the water trap and the damaged water trap is to be repaired and open the water passage of water till the disposal of the present suit.
- 2) The summons/notices were issued against the defendants and it was duly served to the defendants and they have filed the reply vide Ex- 12.
- 3) Heard the arguments advanced by the Ld. Advocate of the plaintiffs. He stated that the defendants had broken the water trap intentionally and because of their act plaintiff was getting water for farming and suffered a huge loss in the picking season. Further, he submitted that the plaintiff has no alternative for farming water, he totally relied on the kennel water and such passage has been broken by the defendants. Therefore, the plaintiff is not able to get water on his farm and he suffered a loss and that cannot be converted into money and praying for an interim injunction.
- 4) *Per Contra*, The Ld. Advocate for the defendants has filed their respective written statements vide Ex-12 and further argued that present plaintiff has no prima facie case, it is the counter case of another suit, and submitted that the one execution is pending in another court for open the way of the carriageway as the right of easement and in such suit he is not cooperating to the defendants and filed the present suit. Further, he

argued that the defendants had not broken the said water trap, it is already broken before the filing of the suit and such fact was also proved from the panchanama by the court. Further, the defendant has made written application to the rural executive magistrate for taking necessary against the person who broke the water trap. Further, he argued that the plaintiff has not proved that he has a prima facie case therefore , the other two components are presumed to be not proved in such case he is not entitled for the interim injunction. Further, he argued that the plaintiff has not produced any evidence in support of the allegation of breaking and damaging the water trap. Further, he relied on the case of A K Sanyal vs Chitta Ranjan Basistha and others(1982 AIR(Cal)(0) 412) of the Hon'ble Calcutta High Court. But he has failed to show the court that how this case is applicable to his case. Therefore, this court has read the case and after reading the facts of the present case and such case are not the same and in my humble view, the ratio of the case is not applicable to the present case. Further he is also relied on the case of Ghanshyamdas and Ors Vs Muralidhar and Ors(1979 AIR(Ori)(0) 76) of the Hon'ble Orissa High Court. But he has failed to show the court that how this case is applicable to his case. Therefore, this court has read the case and after reading the facts of the present case and such case are not the same and in my humble view, the ratio of the case does not apply to the present case. Further, it is argued that plaintiffs have filed the suit with the intention to harass the defendants and all prayer which she averred in the plaint, that cannot be taken from the defendants but that can be availed from the Owner of the suit property and prayed to reject the present application with cost.

5) Following issues are necessary for the determination of the present application for temporary injunction.

- A. Whether the plaintiff has a prima facie case?
- B. Whether the balance of convenience is in favour of the plaintiff ?
- C. Whether the plaintiff would incur irreparable loss if relief was not granted?
- D. What order?

Answers:

- A. In negative
 - B. In negative
 - C. In negative
 - D. As per final order.
- 6) That all the above issues are inter connected, therefore to avoid repetition of the facts, these issues are discussed together.
- 7) First of all, it is pertinent here to discuss the law relating to Temporary Injunction as provided under Order XXXIX Rule 1 and 2:

Order-XXXIX, Rule-1. Cases in which temporary injunction may be granted.- Where in any Suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by Order

grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.

Order-XXXIX, Rule-2. Injunction to restrain repetition or continuance of breach.-

- 8) It is also pertinent here to discuss some important decisions of the Hon'ble Apex Court regarding Temporary Injunction. Hon'ble Apex court in *Dalpat Kumar Versus Prahlad Singh (1992) 1 SCC 719* held that:

The burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be

adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

It is settled law that the grant of injunction a discretionary relief. The exercise thereof is subject to the court satisfying that:

(1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/ defendant;

(2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established a trial; and

(3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

9) In the Case of *Seema Arshad Zaheer Vs. Municipal Corporation of Greater Mumbai*, (2006) 5 SCC 282 the Hon'ble Supreme Court has indicated the

salient features of prima facie case as the discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff:

- *Existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by the issue of a temporary injunction;*
- *When the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favor of the plaintiff; and*
- *Clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.*

10) This is an application for seeking temporary injunction and there are three basic principles for granting or refusing to grant temporary injunction i.e. prima facie case in favour of the party seeking injunction, Balance of convenience in favour of such person and last there must be an irreparable loss which is likely to be caused to the party if injunction is not granted to such person. Thus an injunction being an equitable remedy is always at the discretion of the Court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. In addition to these three basic principles for granting or refusing to grant injunction, the conduct of the person seeking injunction should also be taken into consideration because the granting of injunction is an equitable relief and is a drastic or serious order and there are two basic maxims of

equity which are important to be considered at the time of deciding injunction application which are “He who seeks equity must do equity” and “He who comes into equity must come with clean hands”.

- 11) It is pertinent to discuss the three basic principles/requirements for granting temporary injunction with the facts of the present case. *Firstly*, Prima facie case, prima facie case basically means “sufficient to establish a fact or raise a presumption”. In the case in hand the plaintiff has prayed for restraining the defendants from damaging the water trap and the damaged water trap is to be repaired and open the water passage of water till the disposal of the present suit. Further plaintiff has made an application for panchanama which is allowed by this court and panch rojkam has taken on record vide Ex-10 and from that it is transpired that there are many trees on the disputed water trap and it is in very damaged condition. Further, firstly the prayer of the suit and prayer of the interim injunction application are more or less identical. Therefore, if this court allows the present application then the finality of the suit will be decided. Therefore, in such circumstances Hon’ble High Court of Gujarat in the case of **Jaganben A.Patel Versus State Of Gujarat(1999 (3) GLR 2318)** held that,

“The errors contemplated by this clause may relate to either breach of some provision of law or to material defects of procedure effecting the ultimate decision and not to error either of the fact or law after prescribed forms have been complied with. The matter needs to be examined yet from another aspect. In case the relief as provided for by the plaintiff in the application Ex. 5 is granted it will amount to grant of final relief at this

interlocutory stage of the suit. In fact and substance the grant of temporary injunction result in granting of final relief in favour of the plaintiff. For more than 4 years the plaintiff is enjoying the licence which has been cancelled by the competent authority. The plaintiff is doing business in fact without any valid licence in his favour. It is not the case of validly renewed licence. But as the Civil Court protected the plaintiff the licence has been renewed. The suit is still lying at the initial stage. The law is almost settled that in substance giving the principle relief by way of interim relief is impermissible. See State of U. P. V/s. Vishveshwar, 1995 Supp. (3) SCC 590. Interim order should not amount to overreaching the main relief which ultimately the court may or not grant. See Govt. of Assam Education Department V/s. Ashok K. Kohli 1995 Supp. (4) SCC 214. Interim order in substance giving the principal relief in the petition, such practice is deprecated by the Apex Court in the case of Bank of Maharashtra V/s. Race Shipping and Transport Company, AIR 1995 SC 1368. In the case of Bharat Bhushan Sonaji Kshir Sagar V/s. Abdul K. Hohd, 1995 Supp. (2) SCC 593 the Apex Court observed that interim order passed pending writ petition having effect of allowing the writ petition is not proper.”

- 12) Therefore, considering the ratio decided in aforementioned case, in the present suit the prayer of the interim application will decide the finality

of the case. Hence, this court is not incline to grant a temporary injunction in favor of the plaintiffs. Under such circumstances, this Court hereby passes the following order in the interest of justice.

ORDER

- The application is hereby Rejected.
- Cost shall be the cost in the cause of this suit.

Order pronounced today in open court on 9th May, 2024.

Date: 09/05/2024
Place: Jamnagar

(Parth Pravinchandra Chauhan)
Additional Civil Judge
Jamnagar.
[Judge Code: GJ01692]