

REGULAR CIVIL SUIT NO.04/2024.

ORDER BELOW EXH.5.

- [1] During the pendency of the suit, the plaintiff has filed an application under Order 39, Rule 1 and 2 and Section 151 of the Civil Procedure Code at Exh.5 and has stated that, plaintiff has ancestral property situated at Vavdi Village of Lalpur Tehsil, Dist. Jamnagar, bearing Revenue Survey No.234/*paiki* 1/*Paiki* 2 ad-measuring Hec-Are-Sq. Mtr 0-80-94.
- [1.1] Further, it is stated by plaintiff that, plaintiff is legal owner and occupier of the disputed suit property. The plaintiff had received this property as an ancestral property and defendants do not have any legal right in the disputed suit property. Then, also defendants are trespassing the disputed suit property illegal in order to extract money from the plaintiff. Plaintiff tried to sort out the matter amicably with the defendants and asked them not to take illegal possession of the disputed suit property by the way of trespassing. Defendants have threaten plaintiff to kill himself. As plaintiff is senior citizen, he has tried to convince defendants. However, defendants did not understand anything and continued to harass plaintiff. Defendants are dangerous people and have criminal background.

Therefore, Plaintiff has brought this suit for the permanent injunction against defendants.

[1.2] Plaintiff has further stated that, as plaintiff has threat of kill by defendants. Plaintiff has given an application Superintendent of Police of Jamnagar on dated 08-06-2023. Further, plaintiff has also given an application to Collector Jamnagar to take action against defendants. However, the said application was rejected by Collector. The plaintiff is illiterate, poor and therefore, his legal right is being ignored. Therefore, plaintiff has prayed before the Court for the Justice and as per the say of plaintiff, plaintiff has *prima-facie* case, balance of convenience is also in favour of plaintiff and if the plaintiff is not given justice, he might have face irreparable loss, which can not be compensated in monetary terms.

[2] On Service of summons of the suit, Ld. Adv R. N. Jadeja has appeared on behalf of defendants and has filed written statement of plaint and interim application vide Exh – 22. Defendants have contended that, it is true that the disputed suit property is ancestral property; however, plaintiff do not have continuous possession of the disputed suit property. It is not true that, the disputed suit property is completely owned and occupied by plaintiff; however, plaintiff has received this property as an ancestral

property. It is not true that, defendants have illegally trespass into property owned and occupied by the plaintiff. Defendants have generally and specifically denied all the averments made by the plaintiff in the plaint. As per the say of the defendants the property situated at Vavdi Village of Lalupr Tehsil, Dist. Jamnagar bearing R.S. No. 234 ad-measuring 8-12 *Guntha* was belonging to defendants No. 1's grand father Mr. Namori Umar and after the death of Mr. Namori Umar, 1) Khatijaben Namori, 2) Noormamad Namori, 3) Ismile Namori, 4) Bibiben Namori, 5) Annaben Namori's names have been inserted as Successors and out of which 1) Khatijaben Namori, 2) Bibiben Namori and 3) Annaben Namori have waived off the rights in the disputed suit property and defendants No.1's father Noormamad Namori has partitioned disputed suit property equally amongst all brothers before 30 years, when he was alive. After the death of Noormamad Namori 1) Mariamben Noormamad, 2) Umar Noormamad, 3) Hothi Noormamad, 4) Lakha Noormamad, 5) Mamad Noormamad, 6) Shermamad Noormamad, 7) Ranbai Noormamad, 8) Rehmatbai Noormamad, 9) Fatimaben Noormamad, 10) Zarinaben Noormamad, have been added as successors, out of which except from Mariam Noormamad all other successors have waived of their right in favour of Mariamben Noormamad and the said property was owned by Mariamben Noormamad only.

[2.1] Further, as it is stated by the defendants after the death of Mariamben Noormamad her successors were added, namely 1) Ranbai @ Fatizaben Noormamad, 2) Rahematben Noormamad, 3) Fatmaben Noormamad, 4) Mamadbhai Noormamad, 5) Shermamad Noormamad and 6) Lakhabhai Noormamad; however, they have waived of this rights and as Noormamad Namori had partitioned the disputed suit property between five people before thirty years each of them have their own part of property and as per the partition first part from the North is of plaintiff Hothibhai after that, of defendant No. 1 Noormamad, after that, next part of Lakhabhai Noormamad after that next part of his Shermamad Noormamad and last part towards South is of Mamad Noormamad. plaintiff Hothibhai purchased property of Shermamad Noormamad and of Mamad Noormamad. And defendant No. 1 Umarbhai purchased property of Lakhabhai Noormamad; therefore, Shermamad Noormamad, Mamad Noormamad and Lakhabhai Noormamad waived of their right in the disputed property; thus, only plaintiff Hothibhai and defendant No. 1 Umarbhai remained owner and occupier of disputed suit property. However, as the plaintiff purchased portion of Shermamad Noormamad and Mamad Noormamad, it was not convenient to show separate portion of purchased suit property plaintiff and defendant No. 1 mutually made note in revenue

record by showing them continuously vide, Entry No. 1338. However, plaintiff has his share of property in North direction and other purchased properties of plaintiff are in South direction; therefore, defendant No. 1 has dug well in adjoined property. Therefore, plaintiff wants to take illegal possession of defendant No. 1's land, which has well and bore-well; therefore, plaintiff has filed false suit against defendants. Hence, the defendants have prayed to reject the said application with cost.

[3] In support of his case plaintiff has produced following documentary evidence :-

Sr.	Particulars	Exh/ Mark
1	Xerox copy of application given to the DSP by plaintiff.	3/1
2	Xerox copy of application given to the Jamnagar Collector.	3/2
3	Xerox copy of Village Form No. 6, which shows ownership of plaintiff.	3/3
4	Xerox copy of Aadhar Card of plaintiff.	3/4

[3.1] In support of his case defendants have not produced any documentary evidence in their favour.

[4] I have gone through the pleadings of the parties and to decide present application, following points have been raised for final determination :-

1.	Whether there is a prima-facie case of plaintiff and / or defendants ?
2.	Whether plaintiff and / or defendants proves that, balance convenience is in their favour ?
3.	Whether plaintiff and / or defendants proves that, if the injunction is prayed for is not granted in favour of them, they would suffer irreparable loss, which would not be compensated in terms of money ?
4.	What order ?

[5] Above mentioned points are decided as follows :-

1.	In Negative.
2.	In Negative.
3.	In Negative.
4.	As per final order.

MY REASONS FOR ABOVE POINTS ARE DISCUSSED AS FOLLOWS:-

[6] Heard learned advocate appearing on behalf of both the parties, gone through the applications and evidences produced in supports of the application. These Court has gone through various citations

produced by both the parties with utmost respect. Following are my findings on this application:

[7] It is a judicial concept of court, under O.39, R.1-2 of CPC., and discretionary power have been granted to the court, which should be exercised by the court in judicial manner, that too, considering the facts and circumstances of each case. Further, the parties should come before the court with clean hands. Further, this court believes that while deciding the injunction application, it is well settled principle of law that plaintiff must satisfy that he has a prima-facie case, that does not mean that the court should examine the merits of case closely and come to a conclusion that plaintiff has a case in which he is likely to succeed. It is enough if plaintiff shows a fair question which can be raised at trial. At the same time, all these points are inter-connected with each other, therefore, they are discussed and decided together for the sake of convenience and brevity.

[7.1] Temporary injunction may be granted in following cases:

- (a) Where in 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) Where a defendant threatens, or intends to remove or dispose of his property with a view to defrauding his

creditors; or

- (c) Where a defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit; or
- (d) Where a defendant is about to commit a breach of contract, or other injury of any kind; or
- (e) Where a court is of opinion that the interest of justice is so requires.

[7.2] The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The grant of injunction is in the nature of equitable relief, and the court has undoubtedly power to impose such terms and conditions as it thinks fit. Such conditions, however, must be reasonable so as not to make it impossible for the party to comply with the same and thereby virtually denying the relief which he would otherwise be ordinarily entitled to.

[8] **Point No. 1:**

[8.1] ***Whether there is a prima facie case of Plaintiffs and/or defendants?***

The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a *bona - fide* dispute raised by the applicant, that there is an arguable case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of the prima facie right and infraction of such right is a condition precedent for grant of temporary injunction.

[8.2] On consideration of arguments of both the parties and by looking at the record of the case, it has been observed that the suit has been filed for specific performance of contract. Here at this stage, while deciding any issues of the said suit, this is necessary to observe carefully, whether there is a prima-facie case of the party or not, instead of deciding the case of merits. Therefore it is not justifiable to decide any issue of law or issue of fact on merits of the case, while considering all the evidences produced in this case at this stage. Therefore, after perusal of the record of the case of both plaintiffs as well as defendants, I decide issue No. 1 as Negative.

[9] **Point No. 2 & 3:**

[9.1] ***Whether plaintiff and/or defendants proves that,***

balance of convenience is in their favour?

Whether plaintiffs and/or defendants Prove that, if the injunction as prayed for is not granted in favour of them, they would suffer irreparable loss, which would not be compensated in terms of money?

The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it. The court while exercising discretion in granting or refusing injunction should exercise sound judicial discretion and should attempt to weigh substantial mischief or injury likely to be caused to the parties, if the injunction is refused, and compare it with that which is likely to be caused to the opposite party if the injunction is granted. If on weighing conflicting probabilities, the court is of the opinion that the balance of convenience is in favour of applicant, it would grant injunction, otherwise refuse to grant it. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable loss if the injunction as prayed is not granted, and that there is no other remedy open to him

by which he can protect himself from the consequences of apprehended injury. The expression irreparable loss doesn't mean that there should be no possibility of repairing the injury. It only means that the injury must be material one, i.e. which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exists no specific or fixed pecuniary standards for measuring damages. Here, plaintiff has prayed for this relief, hence it could be concluded that there is no balance of convenience in the favor of plaintiff, And if the injunction would be granted to plaintiff, there is a strong possibility to suffer irreparable loss to defendants. Therefore, I decide issue no. 2 & 3 as Negative.

[10] **Point No. 4:**

On the perusal of the record of the case, it is pertinent that, plaintiffs have claimed for interim injunction in the said disputed suit. Therefore, I decide issue No. 4 as per final order, hence; following order is passed in the interest of justice.

ORDER

1. The application of plaintiff u/O-39, R-1 & 2 is hereby rejected.

2. No order as to costs.

Pronounced in open Court today on this 23rd day of July, 2024.

Date : 23.07.2024

Place: Lalpur

[M. H. Makwana]

Addl. Civil Judge

Lalpur.

GJ 001523

(TYPED BY:

Eng. Steno H C Goswami)