

**ORDER BELOW EXHIBIT 5 IN REGULAR CIVIL SUIT
NO.02/2025**

APPEARANCE:-

- Ld. Advocate Mr. R.M. Baloliya for plaintiff.
 - Ld. Advocate Ex-Party
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1. Heard the learned advocates Plaintiff. Read the application. Perused relevant documents.

2. The present application has been given by the plaintiff under Order 39 R. 1 & 2 for getting interim injunction as prayed. The facts of the suit in gist are as follows that the plaintiff requested to defendant to issue residential plot 100sq yard plot bearing Old survey number 1. It is The defendant started procedure for the eviction of the plaintiff and wanted to take forcible possession of the suit property without due process of law. As per the plaintiff *gram panchayat* has not taken due course of law and have only given a notice dated 10/01/2025 in which defendant has mentioned that if the eviction will not be done peacefully, then harsh actions will be taken by the defendant to evict the plaintiff from the suit property. The plaintiff have brought this application praying for restraining the defendant to remove plaintiff from the possession of the suit property till the disposal of the suit as due process of law has not been taken by the defendant. The plaintiff has prayed for grant of the temporary injunction in his favor.

3. The learned advocate for the plaintiff has submitted before this court that the possession of the suit property since 15 to 20 year and Moreover, It is say of plaintiff that defendant wants to take forcible possession which brought the suit property into danger of being alienated. The learned advocate for the plaintiff further relied on the documents produced in the suit. He contended that the document produced vide mark 4/1 is the notice given by the *sarpanch* of the *panchayat* to the plaintiff in which the *sarpanch* asked plaintiff to produce documents of suit property within 10 days and if not produce within said time than it will presume that the construction on property is illegal and action will be taken against suit property.

The learned advocate further contented that on the basis of this letter, the plaintiff have filed the present suit.

4. In his prayer, the learned advocate for the plaintiff has prayed that the defendant do not have any *locus standi* as due process of law was not taken by the defendant. Also, the limitation of notice is not maintainable and the plaintiff cannot be evicted from suit property and thus prayed for granting of temporary injunction as per the prayer of exhibit

5. On the other hand not defendant nor his advocate appear in this court so this court order for Ex-Party trial.

6. To adjudicate the application following points for determination may arise.

1. Whether the plaintiff shows his *prima facie* case?

2. Whether the Balance of convenience is in favor of the plaintiff?

3. If injunction would not be granted than irreparable injury will cause to the plaintiff?

4. What order?

8. My answer regarding points for determination:

[1] In negative

[2] In negative

[3] In negative

[4] As per final order

Findings:

9. As all the issues are interrelated and interconnected, it is in the interest of justice to deal with all the issues together.

10. As per order 39 R 1 and 2 of the Code of Civil Procedure, the temporary injunction can be granted by a court in the following cases:

(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 power to grant a temporary injunction is in the discretion of the court. This discretion however, should be exercised reasonably, judiciously and on the legal principles. Injunction should not lightly grant as it adversely affects the other side. Generally, before granting the injunction, court must satisfied about the following aspects namely, prima-facie case, irreparable injury and balance of convenience.

11. 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, there is strong case for trial which needs investigation. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima-facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. In the present matter on hand, the learned advocate for the plaintiff

12. Existence of the prima facie case alone does not entitled the applicant for a temporary injunction, but the applicant must satisfied the court that he will suffer **irreparable injury** if the injunction as prayed for 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.

13. Third condition for granting interim injunction is that the **balance of convenience** must be in favor of the applicant. In other words, court must be satisfied that the comparative mischief hardship or inconveniences 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.

14. I am not preventing myself from quoting celebrated and remarkable observation by **Lord Diplock** in **American Cyanamid Co. V/s. Ethicon Ltd 1975 (2) WLR 316**, "*The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favor at the trial. The court must weigh one need against another and determine where the balance of convenience lies.*"

15. To show that there is a prima facie case of the plaintiff, the plaintiff has to show that he has any

right, interest or title in the suit property. The learned advocate for the plaintiff has submitted before this court that the plaintiff is in peaceful possession of the suit property and the said possession was there for last 15 to 20 years and he has the *prima facie* case as now the defendant is using force to evacuate him from his possession which brought the suit property into danger of being alienated. The defendant or his learned advocate has not appeared in this matter and nor produced any documents which supports their say in the matter. The document produced vide mark 4/1, it is application made plaintiff to defendant for a 500 sq. mtr. plot. Mark 4/2 is the certificate of residing at Najapur Village and not have any agriculture land. Mark 4/3 is the certificate issue by the Najapur gram Panchayat for taking a Electricity Board Meter to mention about residing at Najapur Viallage and bearing 27 gutha residing. Mark 4/4 is property tax.

16. The plaintiff has made the submission that he is residing on the land since 15 to 20 years is not supported with any kind of documentary evidences. Merely stating that the plaintiff is in possession of the property since unknown years does not give any right on the land to the plaintiff. It is the duty of the plaintiff that he must show that he is in peaceful possession of the said property since unknown years to claim adverse possession over the

property. This can be proved by oral evidences and therefore it is a matter of trial. But at this stage, the plaintiff has to show his *prima facie* case. Perusing all these records, it seems that the plaintiff is trespasser upon the land. It shows that the present suit property in question is of the government and the plaintiff has no right on the said property. The plaintiff has not produced any documents which purports that he has any right in the suit property. It is well settled principle of law that no injunction can be granted against the true owner of the property. The burden is on the plaintiff to show by evidence or otherwise that there is a "*prima facie* case" in his favor which needs to be adjudicated at the trial. The existence of *prima facie* right and infraction of the enjoyment of his property or the right is a condition for the grant of injunction. *Prima facie* case is not be confused with *prima facie* title which has to be established. Satisfaction that there is a *prima facie* case is by itself is not sufficient to grant injunction. In the present matter, court is of the view that the plaintiff has failed to show any *prima facie* case in their favor. Also, the granting of the temporary injunction is discretion of the court and if the discretion encourages illegality or perpetuates illegality, than such discretion is not to be exercised. Moreover, the notice was given to the plaintiff by the defendant which is sufficient to attract the provision of 'due process of law'.

17. Balance of convenience

The second point which is to be decided while deciding the injunction application is regarding the balance of convenience. The court must be satisfied that the comparative mischief hardship or inconveniences which is likely to be caused to the plaintiff by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it. As the plaintiff is a trespasser upon the land of the defendant, the balance of convenience cannot go in favor of the plaintiff. There has to be a substantive right which requires protection and then only the Court can grant injunction. In the present matter, the plaintiff has failed to show substantive right in their favor.

18. Irreparable injury

The third point before granting of injunction is that who will suffer the irreparable injury. The applicant must satisfy the court that he will suffer **irreparable injury** if the injunction as prayed for 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. In the present matter, it is evident *prima facie* that the plaintiff is not owner of property and he do not have any right, interest or title in the suit property which dis entitles him from any protection under the law and thus it can be stated firmly that there is no any irreparable injury is in favor of the plaintiff.

19. Taking the above-said discussions into consideration, I am of the view that the plaintiff has failed to show any substantive right, interest or title in the suit property and the plaintiff has no *prima facie* case, balance of convenience and irreparable injury. Thus in the interest of justice, I pass the following order.

:: O R D E R ::

1. The application is hereby rejected.
2. Both parties shall maintain status quo till the final disposal of suit.
3. The parties are directed to try speedily this matter and will conclude with in one year from date of this order.

No order as to cost.

Signed and Pronounced in this open court on this 24th day of April 2025.

April 24, 2025
Mendarda

(K.M.Rathore)
Principal Civil Judge
Mendarda
GJ01638