

Order below exhibit 7

1. The brief facts of the plaintiff's application are as under:

That, he has been doing his business on the disputed land since more than last 20 years. The disputed area of the land has been in his possession and peaceful enjoyment since last more than 20 years and he has been earning his livelihood from the same. That, the defendants, with ill will, initiated encroachment proceedings against him vide encroachment case no. 25/2025. Notice with regard to the initiation of the proceedings was served to him on 09/11/24 and the order was passed against him on 04/12/24 whereby the plaintiff has been directed to make open the encroachment by removing Kutcha shade over the disputed area. The execution of the said order has been initiated by the defendants and it is utmost urgent to stop them from executing the said order. The said area has been legally occupied by the plaintiff and the same has been registered in the plaintiff's name in Nagarpalika records. The plaintiff has been regular in payment of property tax for the same to the Nagarpalika. His other government records also states the address of the disputed area as his official address. He also has electricity connection. As the

plaintiff has been in legal, peaceful possession and enjoyment of the said area for more than 20 years, the defendants have no right to disturb the same and hence, present application is filed seeking interim protection from any attempted action of defendants in making open the disputed area by removing the Kutcha Shade(*Chhapra*). Also, the execution of the said order be stayed till final disposal of the present suit. Hence, urged that temporary injunction be granted in the case.

2. The defendants have been served through summons. Defendants no.1 and 2 have appeared and filed their written statement vide exhibit 18 and 19 respectively. Defendant no. 3 has failed to file any written statement, therefore, the suit is tried ex-parte against defendant no.3. The defendants no.1 and 2 have contended that the suit is wrongly filed in the court. No cause of action arose for the plaintiff for filing the suit. No document has been produced by the plaintiff to show that he has any right over the disputed land by virtue of which he can resist the legal actions of defendants. Merely paying tax to the Nagarpalika does not create any right or interest over the land. The pan cabin which the plaintiff runs can easily be shifted to somewhere else and the same would not cause any hardship to him. The action taken by them

in respect of alleged encroachment by the plaintiff was legal and authorised under the law. Therefore, urged that the present application be rejected with costs.

3. Following documents are produced by the plaintiff in support of the application.

Sr.No	Description of documents	Mark
1.	Copy of the order passed by defendant no. 1	5/1
2.	Notice given by defendant no.1 to the plaintiff.	5/2
3.	Copy of Aadhar Card of the plaintiff.	5/3
4.	property tax bill and payment receipt.	5/4-5
5.	Electricity bill	5/6

4. Documents have been produced by the defendants:

Sr.NO.	Description of Documents	Mark
1.	Site inspection report	21/1
2.	Final order in Encroachment case no. 25/2024	21/2

5. From the pleadings of the plaintiff and defendants, documents produced by both the parties and facts of the case, following points are required to be determined for adjudication of this application:-

- (1) Whether the plaintiff proves that he has a prima facie case ?
- (2) Whether the plaintiff proves that balance of convenience is in his favour ?
- (3) Whether irreparable loss will cause to the plaintiff if interim injunction is not granted?
- (4) What order ?

6. My findings to the aforesaid points are as under:-

- (1) In the negative.
- (2) Need not to be decided.
- (3) Need not to be decided.
- (4) As per final order.

- :: R E A S O N S :: -

Issue no.1.

7. Now, taking into consideration the facts alleged in the matter, the plaintiff has, very cleverly, not stated the description of the disputed area over which he claims to have rights. The disputed area is

described as "said area" in the plaint. No survey no. of the land has been mentioned in the entire body of the plaint. However, once in the prayer clause, he has stated that the disputed area is 30 square meters of Revenue survey no. 215 of Santalpur Dhar. He says in his plaint that he has made a kutcha shade over 30 meters of disputed land.

Now, looking to the documents produced by the plaintiff in support of his claim, there is the alleged illegal notice, order for removal of encroachment, electricity bill, property tax payment receipt and property tax bill. None of the documents produced shows that the plaintiff is entitled or has been permitted to carry out his business over the land bearing survey number 215. In fact, the notice issued by the defendant no.1 and the order passed regarding removal of encroachment mention the disputed land to be 30 square meters of revenue survey no. 316. There is no reference of any encroachment by plaintiff over revenue survey no.215. The electricity bill, property tax bill and its payment receipt does not mention the land over which he runs his shop to be upon survey no.215 as claimed by the plaintiff. Similarly, the documents relied upon by the plaintiff also do not mention that he has possession of some area of survey

no.316. It is also to be noted that the plaintiff has not even stated that the disputed area or land is in his ownership. There is no statement made in this respect in the entire plaint. There is no document on record which would support the plaintiff's claim that he has any right to encroach upon the land having revenue survey no.215, or as the case may be, revenue survey no.316. The plaintiff has failed to prima facie show that he has any right to carry on his encroachment over 30 square meters of revenue survey no.215 as claimed by him, or over such area of revenue survey no. 316 which the defendants have ordered to be removed. The act of defendants in removing the encroachment cannot, by any stretch of imagination, be said to be illegal. Therefore, this court is of the view that the plaintiff has failed to prima facie prove that the alleged order passed by defendant no.1 is illegal, consequently, also failed to prove existence of prima facie case in his favour. Therefore, the present issue is decided in the negative accordingly.

8. **Issues No. 2 and 3**

In Kashi Math Samsthan and another v. Srimad Sudhindra Thirtha Swamy and another, A.I.R 2010 S.C.

296, it has been held by the Hon'ble Supreme Court that in order to obtain an order of injunction, the party, seeking grant of such injunction, has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove a prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove a prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.

- 8.1 Hence, where the plaintiff has failed to prove a prima facie case in his favour, in view of the above observations made by the Hon'ble Supreme court, this court is of the view that the issues no. 2 and 3 need not to be decided.

Order

- The present application is hereby rejected.
- The parties shall bear their own costs.

Pronounced in the open court today on 06th of December, 2025.

Date:06/12/25

Anubhav Pandey
Principal Sr. Civil Judge,
Vanthali, Junagadh.
Code:GJ01133.