

Order below exhibit 7

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

That, Survey no. 286 of Sardargadh village of Manavadar is Pasturage land under the ownership of Government. No grass grows on the said land since long. He has put a *kutacha Shade* of 6*15 Meters of the said land and does business of selling *pan* and *bidis*. Total area of 90 meters of the said land is in his possession since long. That, on 11/06/24, the defendant no. 1 has given a notice to him for removing the encroachment over the land bearing survey no. 288. The said notice is with respect to Survey no. 288 and his cabin is on Revenue Survey no. 286. The encroachment is not over Survey no. 288, the defendant is uncertain about the land over which there is an encroachment by the plaintiff. In the year 2013, the plaintiff had sought permission of the collector for performing his business on revenue survey no. 286. The said application was rejected by the collector. The plaintiff went into revision to the higher authority against the said order and the revisional authority remanded back the matter to the Collector. Since then, no action has been taken by the Collector. There is no law that pasturage land cannot be allotted to anyone. The notice of 11/06/24 does not mentioned the limits in four directions of

the alleged encroachment. The plaintiff's possession is over 286 and not in survey no. 288. The plaintiff's possession over revenue survey no. 286 does not obstruct or create nuisance to anyone. No site panchnama has been carried out by the defendant no. 1 in his presence. The defendant no.1 says that the plaintiff's possession is over revenue survey no.288 but has given notice dated 03/07/24 with respect to survey no. 288 and 286. Without measuring the area, the panchayat cannot say that the plaintiff's possession is on which land. Hence, the present suit is filed for cancellation of the said notice and the present application is filed seeking interim relief that the defendant no. 1 be restrained from removing his cabin and from interfering with his operation of business over the said land in pursuance of notice dated 03/07/24. The plaintiff has a prima-facie case, he has possession on the land for over 17 years; he has electricity connection and license of the said cabin and is the only source of income for him and his family. The balance of convenience is also in favour of plaintiff and if the injunction is not granted he would suffer irreparable loss. Hence, urged that temporary injunction be granted in the case.

2. The defendants have been served through summons but have failed to appear before the court, hence, the

suit was ordered to be tried ex-parte against the defendants.

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

Sr.No	Description of documents	Mark
1.	Xerox copy of the Notice given with respect to survey no. 288, dated 11/06/24.	6/1
2.	Xerox copy of the letter of collector dated 05/04/13.	6/2
3.	Xerox copy of the order passed by revisional authority dated 07/12/15.	6/3
4.	Xerox copy of the electricity bill of the plaintiff's cabin.	6/4-5
5.	Xerox copy of the permission for operating the cabin.	6/6
6.	Xerox copy of the Notice given with respect to survey no. 288, dated 03/07/24.	6/7

4. Documents have been produced by the defendants: Nil.

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 himself says that he has encroached upon the land of government bearing revenue survey number 286. He says in his plaint that he has made a kutchra shade over 90 meters of land bearing revenue survey number 286. In spite of this, he claims that the notice for removing the encroachment of the Revenue survey no.288 and 286, as given by the defendant no.1, is illegal because he has not encroached upon the land bearing survey no. 288 but over the land having

survey no. 286. Hence, the said notice at mark 6/7 is illegal as the defendant itself is not certain as to upon what land the plaintiff has encroached.

Now, looking to the documents produced by the plaintiff in support of his claim, there is the alleged illegal notice, two electricity bills of the plaintiff's cabin and registration certificate of plaintiff's cabin. 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 286 or 288. Neither the electricity bills nor the cabin registration certificate mentions the land over which he runs his shop of selling *pan* and *bidis*. It is also to be noted that the plaintiff has not even stated that the land bearing survey no. 288 is in his ownership. There is no statement made in this respect in the entire plaint. Revenue survey number 288 is in whose ownership has also not been stated. 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. 286 or, as the case may be, revenue survey no. 288. The act of defendants that it only mentioned land having revenue survey number 288 as the land on which the plaintiff has made encroachment and, thereafter, mentioned revenue survey no. 286 also along with revenue

survey no. 286 in the subsequent notices does not give any right to the plaintiff to stop the defendant no.1 from removing any encroachment over the government land. The plaintiff has failed to prima facie show that he has any right to carry on his encroachment over revenue survey no.286. He has stated that revenue survey no. 288 is not in his possession. The notice dated 3/07/24 does mention both the revenue survey numbers and as per the statement of plaintiff himself, he has made encroachment to the extent of 90 meters in the revenue survey no. 286. Hence, the said notice cannot be said to be illegal. Therefore, this court is of the view that the plaintiff has failed to prima facie prove that the alleged notice given 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 30th of July, 2025.

Date:30/07/25

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