

ORDER BELOW EXH. 5

1. The plaintiffs have filed this suit for getting the accounts of the partnership firm and for getting declaration that the defendant nos. 6 and 7 does not have any rights to purchase the disputed property and for getting directions that the defendant nos. 1 to 4 and defendant nos. 6 and 7 shall execute the sale deed in favour of defendant no. 5 i.e. partnership firm.

The short facts alleged by the plaintiffs are that:

2. The husband of plaintiff no. 1 and father of plaintiff no. 2 was the partner of the defendant no. 5 - New Age Developers which is a partnership firm. He has 33% share in the firm. The said firm executed agreement to sale with defendant nos. 1 to 4 for purchasing the land bearing revenue survey no. 427/4 + 5 admeasuring 0 Hectare - 16 AREs - 19 sq. mts., city survey no. 1572, Town Planning Scheme No. 6, Final Plot No. 102 total admeasuring 1525 sq. mts. from the defendants, whereby, eight plots have been made on the said land, wherein, plot nos. 1 and 2 were of the ownership of defendant no.1, plot nos. 3 and 4 were of the ownership of defendant no.2, plot nos. 5 and 7 were of the ownership of defendant no.3, and plot nos. 6 and 8 were of the ownership of defendant no.4. These lands were agreed to be sold for a consideration of Rs. 1,51,00,000/- and therefore, Rs. 25 lakhs in cash and Rs. 20 lakhs by way of four cheques each of Rs. 5 lakhs i.e. total Rs. 45 lakhs were paid as earnest money. Thereafter, the defendant no. 5 i.e. the partnership firm floated a scheme in the name and style of Ohm Twins. The advertisement was published in the newspaper and the brochures were printed, however, for some ulterior motive, the defendant nos. 5/1 to 5/3 started working against the interest of the partnership firm and hence, the husband of plaintiff no. 1 and father of plaintiff no. 2 Mr. Pratik Mehta asked defendant nos. 5/1 to 5/3 not to

work against the interest of the partnership firm and to provide the accounts of the said firm to him, however, the defendant nos. 5/1 to 5/3 threatened him of dire consequences because of which he had filed a criminal complaint against them. Thereafter, in collusion with defendant nos. 1 to 4, the defendant nos. 5/1 to 5/3 sold the disputed land to defendant nos. 6 and 7, therefore, Mr. Pratik Mehta went to defendant nos. 6 to 7 and asked to reconvey the sale deed in favour of the partnership firm, however, he was threatened to be killed and because of which he suffered a heart attack and got expired. Thereafter, the defendant nos. 6 and 7 sold the plot no. 1 to defendant no. 8. Hence, this suit is filed and the application below Exh. 5 is given seeking stay that the defendants, their agents, assignees and servants shall not transfer, alienate, mortgage the disputed property to any third party or create any third party interest in the disputed property.

3. Notices were duly served to the defendants. The defendant nos. 5/1 to 5/3 and defendant no. 6 did not appeared before this Court and hence, order was passed to proceed ex-parte against them. The defendant nos. 1 to 4 and defendant nos. 7 and 8 appeared before this Court and sought time to file the reply. Numerous adjournments were granted, however, they failed to file any reply and hence, their right to file the reply was closed by this Court on date 24.08.2021. The said order of closing the right to file the reply has not been challenged so far.

4. Considering all the documents and the application below Exh. 5, this court has raised following issues as under:

1. Whether plaintiffs prove that they have prima-facie case?
2. Whether plaintiffs prove that the balance of convenience is in their favour?

3. Whether plaintiffs prove that if injunction as prayed for is not granted, irreparable loss which cannot be compensated in terms of money, will be caused to him?
4. What Order?
5. My answers to aforesaid issues are mentioned herewith:
 - 1) In Affirmative
 - 2) In Affirmative
 - 3) In Affirmative
 - 4) As per the Final Order.

// REASONS //

6. ISSUE NOS.1 TO 4

- 6.1** At the outset, it may be mentioned that for the sake of convenience, all the above issues have been discussed together. The issuance of injunction is governed by Order-39 of the C.P.C., Rule-1 & 2 is also there and sometimes, Sec.151 of the C.P.C. is also required to be invoked. In short, first of all, if we look at the provision of Sec.151 of C.P.C., it appears that this provision is a statutory provision regarding the inherent powers of the Civil Court. It is merely a procedural provision which enables a party to have the proceedings of pending suit conducted in a manner consisting with justice and equity. The cases and circumstances arise which are not covered by expressed provision of the Statute, where justice has to be done. In such case, the Court is guided by its inherent powers relying on the principles of justice, equity and fair play. The inherent jurisdiction can be exercised when the

Court has jurisdiction and parties' right is clearly shown. Now, looking to the provisions of Order-39, Rule-1 & 2, it appears that Rule-1 of Order-39 of the C.P.C. envisages in granting of temporary injunction when there is a question for dis-possession thereof. Rule-2 of Order-39 of C.P.C. lays down the procedure for issuance of injunction for restraining breach of contract or other injury of any kind. Moreover, the provisions of Rule-1 & 2 of Order-39 lay down the circumstances under which, a temporary injunction can be granted and unless these circumstances exists, the Court has no jurisdiction to grant it, but the fact that these circumstances exists does not compel the Court to grant it in all cases in as such as, the Rule only shows that in the cases mentioned therein, the Court may grant an injunction. Thus, the granting of an injunction under the Rule is purely within the discretion of the Court. The grant of injunction is a very serious matters and Court should always take good care to grant an injunction in cases only where such an injunction is essential. It being an equitable relief, it would be refused to the person who himself has failed to do equity. The principle govern the exercise of the discretion are to be effected; firstly, there should be a serious question to be tried in the suit and that on the facts before the Court, there should be probability of an applicants being entitled to the relief asked for by him. Secondly, that the Court's interference is necessary to protect him from that species of injury which the Court calls irreparable before legal right can be established on trial and thirdly; that the comparative mischief or inconvenience which is likely to arise from withholding the

injunction will be greater than that which is likely to arise from granting it. The first of the above condition is what is generally termed as a (prima facie case) I.e. in other words, prima facie existence of right and its infringement, but the existence of a prima facie case alone is not by itself sufficient. The plaintiff should further satisfy the second condition by showing that irreparable injury will accrue to him, if the injunction 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 term "irreparable injury" The term "irreparable injury" only means that the injury must be material one I.e. one that cannot adequately compensated for damages. The third condition is what is called "balance of convenience". In applying these principle, the Court should compare amount of substantial mischief likely to be done to the applicants, if the injunction is refused and also compelled it which is likely to be caused to the other side, if the injunction is granted. Even where, all the above conditions are satisfied, a temporary injunction nevertheless be refused for the other reasons.

6.2 Also I am relying on the judgement of the Hon'ble Apex Court and Hon'ble High Court which are as follows:

[A] Gujarat Bottling Co. Ltd. Vs. Coca-Cola Co. reported in 1995 (5) SCC 545.

Hon'ble SC gave a landmark judgment as to the guidelines to be followed by the court while considering applications for granting

a temporary injunction. Some of them are:

- *An applicant seeking the injunction must establish a prima facie case in his favor.*
- *The court must examine the conduct of the applicant. Such conduct needs to be examined even at the stage where an application to set aside an order under order 39 Rule 4 of the code has been filed.*
- *Court has to examine the comparative balance of loss to be caused to the applicant and respondent if such order is not passed. In such a case, the court must first examine the extent of loss that will be caused to the applicant and also if such loss is reparable by monetary compensation. Then the court must examine the extent of loss the respondent will incur if such an order is passed. The court after examining the aforementioned, Court will see which party incurs a greater loss, and the party that would have greater and irreparable loss will be having a balance of convenience in their favor and then the court must pass or refute the order accordingly.*
- *Court has the power to direct the party to deposit security or an undertaking for the payment of compensation if ordered.*

[B] Dalpat Kumar Vs Prahlad Singh reported in AIR 1993 SC 276

Hon'ble SC held that Grant of injunction is a discretionary power of the court which can be exercised thereof:

- *There is a seriously disputed question that is to be tried by the court in the suit on the facts before the court, but there is the probability of his being entitled to the relief which the plaintiff*

or the defendant is asking.

- *The court needs to interfere as it is necessary to prevent the possible future loss or protect the party from the species of injuring. To be precise, before the legal right is established at trial, irreparable loss or injury would have ensued.*
- *The comparative hardship or mischief or inconvenience would be greater than that would be granted, which is likely to occur from withholding the injunction.*

[C] Morgan Stanley Mutual Fund v. Kartick Das (1994) 4 SCC 225,

Hon'ble SC held that ex-parte injunction could be granted only under exceptional circumstances. The factors which should weigh for grant of injunction are:

- whether irreparable loss or injury or serious mischief will ensue to the plaintiff;*
- whether the refusal of ex-parte injunction would involve greater injustice than grant of it would involve;*
- even if ex-parte injunction should be granted, it should only be for limited period of time, and*
- general principles like prima facie, balance of convenience and irreparable loss would also be considered by the Court.*

[D] Bank of Maharashtra v. Race Shipping and Transport Co. Pvt. Ltd. and Anr. reported in AIR 1995 SC 1368

Hon'ble SC held that no final relief can be granted in the form of interim relief. The operative portion reads as follows:

“Time and again this Court has deprecated the practice of

granting interim orders which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations”

[E] Maria Margadia Sequaria v/s Erasmo Takl De Sequaria reported in 2012(5) SCC 370:

The Hon’ble SC held that:

While passing the order, the Court must take into consideration the pragmatic realities and pass proper order for mesne profits. The Court must make serious endeavour to ensure that even-handed justice is given to both the parties.

88. Ordinarily, three main principles govern the grant or refusal of injunction.

- a) prima facie case;*
- b) balance of convenience; and*
- c) irreparable injury, which guide the Court in this regard.*

89. In the broad category of prima facie case, it is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must be governed by the prima facie case. In grant and refusal of injunction, pleadings and documents play vital role.

7. Considering the averments made by the plaintiffs in the plaint and the application, the documents produced by the plaintiff it is apparently clear

on record that the husband of plaintiff no. 1 and father of plaintiff no. 2 was the partner of the defendant no. 5 and he had 33% share in the firm and the plaintiffs being the legal heirs of deceased partner as per partnership deed para 14 which says that on death of partner, his legal heirs become the partner of the partnership firm. It is contended that the said firm executed agreement to sale with defendant nos. 1 to 4 for purchasing the disputed land from the defendants, whereby, eight plots have been made out of the said land. It is further contended that these lands were agreed to be sold for a consideration of Rs. 1,51,00,000/- and therefore, Rs. 25 lakhs in cash and Rs. 20 lakhs by way of four cheques each of Rs. 5 lakhs i.e. total Rs. 45 lakhs were paid as earnest money. It is further contended that, thereafter, the defendant no. 5 i.e. the partnership firm floated a scheme in the name and style of Ohm Twins, however, for some ulterior motive, the defendant nos. 5/1 to 5/3 started working against the interest of the partnership firm and hence, the Mr. Pratik Mehta asked defendant nos. 5/1 to 5/3 not to work against the interest of the partnership firm and to provide the accounts of the said firm, however, the defendant nos. 5/1 to 5/3 threatened him of dire consequences because of which he had filed a criminal complaint against them. It is further contended that, thereafter, in collusion with defendant nos. 1 to 4, the defendant nos. 5/1 to 5/3 sold the disputed land to defendant nos. 6 and 7, therefore, Mr. Pratik Mehta went to defendant nos. 6 to 7 and asked to reconvey the sale deed in favour of the partnership firm, however, he was threatened to be killed and because of which he suffered a heart attack and got expired. It is further contended that thereafter, the defendant nos. 6 and 7 sold the plot no. 1 to defendant no. 8. Hence, the present suit has been filed and the application below Exh. 5 is filed seeking stay. The defendants have not filed any reply to the present application and hence, it is presumed that they have accepted the

contention raised by the plaintiffs. Hence, it is prima facie believed that the plaintiff has prima facie case and therefore, **I answer issue no. 1 in positive.** The balance of convenience is also in favour of the plaintiff as they are 33% partners in the the partnership firm which is not dissolved or closed and as per the partnership deed, the plaintiffs are the partners of the firm and they have asked for the accounts of the partnership firm which they are legally eligible to get and if any loss is caused to the partnership firm then the plaintiff will also suffer loss and therefore, their valuable rights will be affected and if the property is transferred, alienated, mortgaged or if any third party interest is created in the disputed land then there will be multiplicity of proceedings, as already one fraction of the disputed property is sold to third party i.e. defendant no. 8, the plaintiffs would suffer irreparable loss. Hence, **I answer issue nos. 2 and 3 in affirmative.**

8. Considering the above discussions and principles of law, as I have answered issue nos. 1 to 3 in positive, I pass the necessary order for issue no. 4 in the interest of justice.

:: ORDER ::

- The application below Exh. 5 is hereby allowed.
- No order as to cost.

Signed and pronounced in the open court today i.e. on 29th day of the month of March, 2023.

Date : 29.03.2023
Place : Nadiad.

Mrs. R.S. Rajput
Principal Senior Civil Judge & ACJM
Kheda at Nadiad
GJ00744