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Regular Civil Suit No. 31 of 2017

ORDER BELOW EXH. 05 AND 13

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- [1] The present application vide Exh-05 is preferred by plaintiff seeking temporary injunction against the defendant under Order 39, Rule 1 and 2 and section 151 of the Civil Procedure Code, and in the response of the plaintiffs Exh-05 application the present application vide Exh-13 is preferred by defendant seeking temporary injunction against the plaintiff under Order 39, Rule 1 and 2 and section 151 of the Civil Procedure Code.
- [2] The plaintiff has filed present suit against the defendants for declaration and injunction. Further it is averred that the old tenure property vide block no.924 khata No. 263 admeasuring total 1-39-62 situated at Jakhed is of the plaintiff ownership and possession (which is hereinafter referred as suit property) further it is averred that suit property is ancestral property and in possession of plaintiff and at present plaintiff used to cultivate. Further it is averred that plaintiff is illiterate and plaintiff has given power of attorney to defendant no.1 only to transfer from new tenure to old tenure. Further it is averred that on 13-06-2016 by misusing power of attorney defendant no.1 has executed false sale deed of the suit property to defendant no.2. Further it is averred that when it came to the notice of plaintiff on 04-07-2016 the plaintiff has given objection application and affidavit before sub-registrar office Thasra.Inspite of that without taking into consideration the objection of the plaintiff on the basis of sale deed the name of defendant no.2 was entered vide its Entry No.4337. against which the plaintiff has preferred appeal. Further it is averred that defendant has no right or interest in the suit property inspite of that defendant is trying to

take possession of the plaintiff. hence the plaintiff has filed present application seeking injunction. Further it is averred that the plaintiff has prima facie case and balance of convenience is also in favour of plaintiff and irreparable loss will be caused to the plaintiff if injunction is not granted. therefore plaintiff has prayed that injunction application at Exh-5 may be allowed and injunction may be granted. The plaintiff has relied upon the documents from Mark 3/1 to 3/6.

- [3]** The summon and notice have been duly served upon the defendants and the defendants appeared along with his/her/their learned advocate and filed written statement containing Counter Claim vide Exh.11, wherein, denied to the averments in the plaint. And also filed injunction application vide its Exhibit-13 wherein it is averred that the sale deed was executed after accepting the total amount of consideration. Further it is averred that the power of attorney was not executed only to transfer from new tenure to old tenure but it was executed in details for all proceedings and it was registered in office of sub registrar. Further it is averred that on 16-06-2009 plaintiff no.2 executed agreement to sell and possession was given to defendant. Further it is averred that it was decided that registered sale deed will be executed after converting land from new tenure to old tenure. Further it is averred that on 05-05-2010 new agreement to sell along with possession was registered before Notary and power of attorney was also registered on 12-05-2010. Further it is averred that suit property was converted from new tenure to old tenure on 20-03-2012 vide entry no. 3888. Which was certified on 14-07-2012. Further it is averred that thereafter in knowledge of plaintiff on 13-06-2016 the power of attorney holder i.e. defendant no.1 has executed registered sale deed to defendant no.2 which was entered in revenue records its entry no. 4337 and certified on 09-

09-2016. Further it is averred that in gram namuna no. 7 and 12 and 8 A the name of defendant no.2 is running and revenue also paid by defendant no.2. it is averred that after converting the land to old tenure the plaintiff was intending to take the possession without due process of law. therefore the defendant has given public notice on 07-01-2013 in sandesh paper which was in knowledge of plaintiff also. Thereafter on 13-06-2016 t he registered sale deed was executed inspite of that the plaintiff has filed false suit hence the defendant has filed counter claim and injunction application. Further it is averred that the defendant has prima facie case and balance of convenience is also in favour of defendant and irreparable loss will be caused to the defendant if injunction is not granted. therefore defendant has prayed that application at Exh-13 may be allowed and injunction may be granted. The defendant has relied upon the documents from Mark 12/1 to 12/12.

- [3.1]** Ld. advocate for the plaintiff argued that the plaintiff has prima facie case and balance of convenience is also in favour of plaintiff and irreparable loss will be caused to the plaintiff if injunction is not granted. Therefore present application vide Exh-5 deserves to be allowed.
- [3.2]** Ld. advocate for the defendants argued that the defendant has prima facie case and balance of convenience is also in favour of defendant and irreparable loss will be caused to the defendant if injunction is not granted. Therefore present application vide Exh-13 deserves to be allowed.
- [4]** Before discussing the factual aspects of the matter, certain legal provisions and settled law with regard to temporary injunction are required to be taken into consideration. The Honorable Supreme Court as well as Hon'ble High Court by catena of decisions have laid down that the relief of temporary injunction may be granted

after testing the facts, circumstances and evidences produced by the plaintiff upon the scale of following principles; (1) Applicant establishing a prima facie case; (2) Applicant showing irreparable injury to him on refusal to grant temporary injunction; (3) Applicant showing balance of convenience in his favour and that greater inconvenience will be caused to him if temporary injunction is refused; and (4) any other factors favouring the Applicant. Granting an injunction is a matter of discretion and while exercising that discretion, the Court has to satisfy itself that whether the applicant actually has a 'triable case'. Before invoking the jurisdiction of the court to seek temporary injunction the applicant is bound to show that he has a legal right and the opposite party is trying to invade that right. Further, it is the settled position of law that the applicant has to stand on his own legs and the applicant cannot gain any benefit of the weakness of the opposite party. Therefore after considering the Pleadings and documentary evidences produced and arguments advanced by the parties and guidelines of Hon'ble Apex Court, for the disposal of the present application following issues appears before this court-

- 1- Whether the respective Applicant proves his Prima Facie Case?
- 2- Whether the respective Applicant proves that the balance of convenience is in his favour?
- 3- Whether the respective Applicant proves that applicant will suffer irreparable loss if interim injunction is not granted?
- 4- What order?

Replies of above issues are as below-

- 1- Negative/Affirmative
- 2- Negative/Affirmative.
- 3- Negative/Affirmative.

4- As per final order

[5] I have perused entire record and considered rival submission. Therefore, at this juncture the provision of Order 39 Rule-01 become important which is as below_ -

Rule 1 Order XXXIX of Code of Civil Procedure 1908 "Cases in which temporary injunction may be granted"

Where in any suit it is proved by affidavit or otherwise

- (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 Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or dispossession of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until tile disposal of the suit or until further orders.

[Emphasis supplied]

After considering the above provision the ratio laid down by the Hon'ble Courts in following cases become important which are as below:-

- 1- Himachal Pradesh High Court in the matter of *The Himachal Pradesh State Electricity Board Limited vs. Valecha Engineering Limited and Ors.*, OMP No. 169 of 2020 in COMS No. 22 of 2019 decided on 12.10.2020 while relying upon the judgment in *Shakunthamma v. Kanthamma*, AIR 2015 Karnataka 13 held that:-

A- The defendant can maintain its application seeking injunction under sub rule (a) of Order XXXIX, Rule 1 of the Code only. The court also held that the remedy under Rule 1 (b) and (c) is not available to the defendant and such application by the defendant would not be maintainable. The court also held

that cases in which interim relief sought does not fall under Order XXXIX, Rule 1 (a) of the Code, the court has inherent jurisdiction to grant the relief of temporary injunction in its discretion, if it is satisfied that such an order is necessary to meet the ends of justice or to prevent abuse of process of the court and nothing in this Code shall limit or otherwise affect such inherent power of the court.

B- As it has been extensively discussed, the Code provides for various manners in which a party can seek the remedy of temporary injunction. In our opinion, the intention of the legislature is crystal clear from the words used in Order XXXIX Rule 1 which specifically provides for remedy for plaintiff against the action/inaction of the defendant under sub rule (b) and (c). It is only sub rule (a), which is worded in a party neutral manner. Thus, it is clear that legislature has deliberately made out distinction amongst plaintiff and defendant *qua* remedies available under the Code. Therefore, it would not be proper for the court to hold to the contrary, against the intention of the legislature. Providing the remedy under sub rule (c) to the defendant would amount to not only rewriting the statutory provision by the court, but also going against the legislative intent.

- 2- In case **Straight Vs Bura L.R.5 Ch.AP.165** and **Alilandammal Vs.Venkatachala Mudali, 6 M.H.C.R.112** it has been held that an injunction can be granted where there is a material injury infringing a clear legal right.
- 3- In case **Union of India vs. Amrik Singh, AIR 1963 Punj. 104** it has been held that Courts generally issue injunctions where the right sought to be protected is clear and not where it is doubtful.

- 4- In case **Mathew vs. Koshy, AIR 1966 Mys. 24** it has been held that the party seeking the aid of the Court for an injunction must establish that the act complained of is in violation of his right or is at-least an act which if carried into effect will necessarily result in a violation of the right. **In this case it has also been explained** that the Prima facie case means that it needs serious consideration, investigation or determination. It does not mean proof at this stage. It means bonafide dispute requiring determination without pre-judging the case. In order to find out whether there exists any prima facie case in favour of a party or not, it would be enough if it could be established that there was a seriously arguable question and it is not necessary that the point be proved to the hilt at that stage. Showing a reasonable chance of success is enough. The apparent strength of the applicant's case is the guiding factor. Then Court has to consider the balance of convenience and irreparable loss aspects. When the Court is called upon to examine whether applicant has a prima-facie case for the purpose of granting temporary injunction, the Court must perforce examine the merits of the case. But the findings on various questions like right, title or interest in the suit land would be merely incidental or ancillary for the purpose of assessing the prayer for temporary injunction, and not for anything else and the said findings shall not be of any avail or effect for any other purpose.
- 5- In case **Aukkha Singh vs. Mahal Singh, AIR 2003 Raj. 21** it has been held that Prima-facie case not to be confused with prima-facie title.

6- Balance of convenience:- Balance of convenience may mean the convenience and inconvenience of the parties contesting an application for temporary injunction and the same may be equated with what had been left out after weighing the prima-facie case of both sides.

[6] After considering the above provision and ratio of the judgments and also the facts and averments of the case it appears that the plaintiff has filed present suit for declaration and injunction and filed application at Exh-5 seeking injunction whereas the defendant filed counter claim along with injunction application at Exh-13 seeking injunction. I have gone through the application at Exh-5 and Exh-13. I have also gone through the documents at Mark 3/1 to 3/6 and Mark-12/1 to 12/12. Upon perusing the document at Mark-12/12 agreement to sale prima facie it appear that on 12-05-2010 the possession of the suit property was handed over by plaintiff no.1 and 2 to defendant no.2. more over upon perusing general power of attorney which is produced by the plaintiff along with suit prima facie it appears that the plaintiff no.1 and 2 has given power in the suit property not only to convert property from new tenure to old tenure but also it was given for other purposes and proceedings including sale deed also. More over upon perusing the sale deed at Mark-3/1 which is under challenged prima facie it appears that it was suit property was sold by defendant No.1 as power of attorney holder of plaintiff no. 1 and 2, to defendant No.2 moreover the said sale deed is registered before Sub Registrar Thasra. Moreover upon perusing documents at Mark-12/1 to 12/3 it appears that in revenue records also name of the defendant no. 2 is running on the basis of sale deed. moreover as it is averred by the plaintiff that power of attorney was misused and it was given only to convert property from new tenure to old tenure it can be decided

during the trial and it is the subject matter of trial. Therefore, due to reasons discussed above, this court humbly opined that the arguments supported by the plaintiff is not supporting to his case and therefore for the reasons discussed above it can not be said that the plaintiff has proved his prima facie case and balance of convenience of the case is in his favour. On the other hand for the above discussed reasons it can be presumed that defendant has prima facie case, and balance of convenience is also in favour of defendant and if injunction is not granted then irreparable loss will be caused to defendant. Hence, I pass the following order:-

:: ORDER ::

1. The interim injunction Application of the plaintiff vide-Exh-05 is hereby rejected.
2. The interim injunction Application of the defendant vide-Exh-13 is hereby allowed.
3. The plaintiff and defendants to maintain status-quo till the final disposal of the suit.
4. Cost will follow the final decision of the suit.

Pronounced and signed in the open court today.

Date : 09.05.2025
Place : DAKOR

[Narendra kumar Joshi]
Principal Civil Judge, Dakor
GJ01454