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Regular Civil Suit No. 37 of 2022

ORDER BELOW EXH. 05

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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.
- [2] The plaintiffs have filed present suit and it is averred that one shop situated at dakor market vide its survey no.2314 admeasuring 3.85 sq. mtr. which is in possession and ownership of the plaintiff. which is more particularly mentioned in para No.1 of the plaint. (which is hereinafter referred as suit property). further it is averred that father of the plaintiff Ramanlal Ambalal was the owner of the suit property and by way of will the suit property alongwith the house was given to the plaintiff and from then the plaintiff is the owner of the suit property and possessed the suit property.further it is averred that the present defendants were never tenant of the plaintiff and so many times plaintiff said to defendant to handover the possession of the suit property but the defendant had not responded and defendants had illegally possessed the suit property and doing business. further it is averred that defendant No.1 had illegally without and right given suit property to defendant no.2. further it is averred that adjucent to the suit property the defendant had obstructed the way of plaintiff and had changed the nature of the suit property and creating the nuisance. further it is averred that suit property is very old and may collapse at any time.The plaintiff is retired and the suit property is ancestral property of the plaintiff and plaitiff requires for residence.further it is averred that plaintiff wish to damage the suit property and willing new construction, hence the plaintiff constrain to file the present suit for seeking possession

of the suit property. The plaintiff has supported his case through documentary evidence produced by list vide-3/1 to 3/9.

- [3] In this matter the summon and notice have been duly served upon the defendants and the defendants No.1 and 2 appeared along with their learned advocate, and filed written statement vide it exh-15. wherein defendant denied to the averment in the plaint and further it is contended that the father in law of defendant no.1 is tenant of father of the plaintiff since 28-07-1957 and was paying rent as per rent agreement. further it is contended that prior to the demise of the father in law of defendant no.1 her husband Mahesh kumar was doing the administration of the suit property and doing the business of sweet namely shriram jalebi center and after the demise of Mahesh kumar defendants are doing business of sweet and farsan in the suit property. further it is contended that husband of defendant no.1 was regularly paying 600/- Rs rent every year and thereafter defendants also regularly paying the rent and also regularly paying nagar palika tax and electricity bill. further it is contended that defendants are regularly paying rent and are not tenant in arrears. further contended that the defendant had no other property or source of income except the suit property. the plaintiff possessed property at ahmedabad is not required the suit property. further it is contended that the plaintiff had not come with clean hand. there is no cause of action to the plaintiff. balance of convenience lies in favour of defendant. The plaintiff has no prima facie case, hence the present application deserves to be rejected. the defendants also relied upon documentary evidences from Mark-16/1 to 16/12.
- [4] Thereafter, ld. advocate for the plaintiff filed written argument vide its Exh-18 and further it is argued that the plaintiff has prima facie case and balance of convenience lies in favour of plaintiff and if relief is not granted then irreparable loss will be caused to the plaintiff. lastly argued that present application deserves to be allowed.

ld. advocate for the defendant argued that plaintiff has no prima facie case and balance of convenience lies in favour of defendant. hence the present application deserves to be rejected.

[6] 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 applicant proves his Prima Facie Case?
- 2- Whether the applicant proves that the balance of convenience is in his favour?
- 3- Whether the 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
- 2- Negative
- 3- Negative
- 4- As per final order

[7] I have perused entire record. 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- 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.
- 2- 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.

- 3-** 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.
- 4-** 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.
- 5-** 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.

[8] After considering the above provision and ratio of the judgments and also the facts and averments of the case it can be said that the plaintiff had prayed for the possession of the suit property and also prayed for the injunction. I have gone through the application and also gone through the reply filed by the defendant. at this juncture it is necessary to discuss that it is averred by plaintiff that father of the plaintiff Ramanlal Ambalal was the owner of the suit property and by way of will the suit property alongwith the house was given to the plaintiff and from then the plaintiff is the owner of the suit property and possessed the suit property. it can be decided after the recording evidence and trial. further it is averred by the plaintiff that the suit property was rented by the father of the plaintiff to father in law of defendant no.1 prior to 65 years. further it is averred that along with the father in law of defendant no.1, husband of defendant no.1 and father of defendant no.2 was running shop of selling dahi and milk. further it is averred that rent of the suit property was desided 10 Rs. monthly and responsibility of all the taxes was on the father in law of defendant no.1. and month of the rent will start from english month 1 st date and complete last date of same month. the rent will be paid between 1 to 10. no changes to be made in the suit property without prior permission of the owner and not to create nuisance. and without and objection to hand over the possession of the suit property to the owner when required by the owner. it requires the trial and without taking required proof on record it can not be said that the defendants have no right over the suit property. Therefore, due to reasons discussed above, it can not be said that the plaintiff has proved his prima-facie case and it can not also be presumed that the balance of convenience of the case is in favour of the

plaintiff. Hence at this situation, 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, and if the interest of the plaintiff is not protected at this stage then the plaintiff will suffer greater irreparable loss. Therefore in this situation at present, it can safely be said that at this stage the plaintiffs have failed in showing all three factors for granting interim injunction in his/her/their favour at this final stage of this application. Hence, I pass the following order:-

:: O R D E R ::

- The interim injunction Application of the plaintiff vide-Exh-05 is hereby Rejected.
- Cost will follow the final decision of the suit.

Pronounced and signed in the open court today.

Date : 05.09.2024
Place : DAKOR

[Narendra Kumar Joshi]
Principal Civil Judge, Dakor
GJ01454