

**Order below Exhibit-5**

- (1) This is an application filed by the Plaintiff under Order-39 Rule-1 & 2 read with Section-151 of the Code of Civil Procedure, 1908 for seeking to temporary injunction to restrain the defendants and their agents to enter or dispossessed the suit property which is situated at Zarol Ta. Vaso bearing the Property No. No.213 which old No.2/158.
- (2) The notices and summons were issued by the Court and it were duly served to the defendants. The defendants are appeared before the court through an Advocate. The defendants have submitted their written statement vide exhibit-12. The plaintiff has submitted documents vide mark-3/1 to 3/24.
- (3) Heard the Ld. Advocate for the plaintiff. He has argued as per application for temporary injunction. He further submitted in his written arguments wide Ex.24 that the suit property is belongs to plaintiffs and their ancesstral and defendants have no right in the suit property. He further contended that, there is prima facie case in favour of the plaintiffs against

defendants and the balance of convenience is also in his favour. He further contended that, the plaintiff would suffer irreparable loss if the injunction would not be granted in favour of plaintiff. Hence, prayed for temporary injunction.

(4) Heard the the Ld. Adv. for the defendants no.1 to 3 submitted the written argument wide Ex.28. Ld. Advocate of defendants contended that, there is a dispute between the plaintiff and defendants. The suit property is belongs to Defendants. The defendants are paying the reveune tax of the suit property. Plaintiffs are not come in the court with clean hands. Defendant's Advocate also contended that, the suit property was using as Temple. Afterwards when all of faliya converted in Christian Community, the useage of suit property being closed. The orginal suit property is belongs to defendantsonly. Hence, the present suit should be dismissed along with application for temporary injunction. He further submitted as per his respective written statement. He further contended that, there is no prima facie case in favour of the plaintiff against defendants and the balance of convenience is not in his favour. He further contended that,

the plaintiff would not suffer irreparable injury if injunction would not be granted in her favour. Hence, the defendants prayed for rejection of application for temporary injunction.

(5) This is an application for temporary injunction and there are three basic principles for granting or refusing to grant temporary injunction i.e. prima facie case in favour of the party seeking injunction, balance of convenience in favour of such person and last there must be a irreparable loss which are likely to be caused to party if injunction is not granted to such person. And an injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. Apart from three basic principles, the court is also required to see the conduct of party seeking equitable relief of temporary injunction.

(6) Looking to the materials on record, it appears that the suit property was situated at zarol Ta. Vaso wide the mark-3/1. It is also transpired from the record wide the mark-3/1 that

property No. 213 is belongs to plaintiff and in the owner's column, plaintiff's name was already exists. Even peruse from the record, it is transpired that defendants names are not on the Akarni Patrak which is produced vide mark-3/1. It also appears from the document produced vide mark-3/1 that the suit property belongs to plaintiff only.

(7) The plaintiff has filed this suit for declaration that the defendants or their agents have no right to disturb the possession of plaintiff and for perpetual injunction restraining defendants to do so. It is transpired from the documents produced before this court that, the suit property is belongs to kiritbhai shankarbhai parmar. The defendants asking their right over the property with the argument of original owner of that property, but its is the question of evidence. At, this juncture it can not be decided. Even defendats did not produce any documentry evidence which shows that they are the owner of suit propety. Hence, plaintiffs are require to get the relief as they seeking for. From the record of the case plaintiffs submitted the documents which shows that the disputed land was belongs to him only. So, looking to the

document produced by the plaintiff vide mark-3/1 to mark-3/24, prima facie it is prove that the defendants are trying to get enter to the property which is already of plaintiff's. Looking to the record it appears that the defendants have not produced anything to prima facie show that the disputed land is belongs to them only.

(8) Furthermore in "Adani Export Ltd. Vs. Hindustan Organic" reported in 2000 (3) GLR page no-2759 case, it has been held in para-31 and 32 by the Hon'ble High Court of Gujarat that;

*"it is well settled principles of law that the rule that before the issue of a temporary injunction, the Court must satisfy itself that the plaintiff has a prima facie case, does not mean that the Court should examine the merits of the case closely and come to a conclusion that the plaintiff has a case in which he is likely to succeed. This would amount to prejudging the case on its merits. All that the Court has to see is that on the face of it the person applying for an injunction has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. (Para 31)*

*In order to make out a prima facie*

*case, necessary for granting an interlocutory injunction, the plaintiff need not establish his title. It is enough if he can show that he has a fair question to raise as to the existence of right which he alleged and can satisfy the Court that the property in dispute should be preserved in its present actual condition until such question is disposed of. The Court must also, before disturbing any man's legal right stripping him off any of the rights with which law has clothed him, be satisfied that the probability is in favour of his case ultimately failing in the final issue of the suit (Para 32).*

*It is also a well settled principles of law that what the Court has to determine in granting injunction is whether there is a bona-fide contest between the parties and when there is a fair and substantial question to be decided as to the rights of the parties in the suit, it is not necessary for the purpose or is it right that the Court should further examine the question in dispute or anticipate the decision of the question in the suit itself. (Para 32.1).*

9) So in view of such position of law, this court inclines to grant temporary injunction in favour of the plaintiffs against the defendants since the plaintiffs have established prima facie case in favour of plaintiffs by showing that the disputed Property is belongs to him only. And if the temporary injunction is not granted to the plaintiffs, they will have to suffer irreparable loss which could be compensated in terms of money and the balance of convenience is also in favour of the plaintiffs. Hence I hereby pass following order in the interest of justice.

**- :: ORDER :: -**

- The application for seeking temporary injunction is hereby **allowed**.
  
- The defendant is hereby ordered and directed that they or any of the person related to them shall not have any right to disturb the possession of the suit Property which is situated at Zarol, Ta.Vaso bearing the Property No.213 bearing old Property No.2/158 until further order of the court or the final disposal of this suit.

- Cost shall be the cost in the cause of this suit.

Order is Pronounced today in open court on 05th, December-2020.

Date:- 05/12/2020

**(Rachit Kamleshbhai Trivedi)**

Place:- Vaso

Principal Civil Judge,  
**Code No. GJ01216**  
Vaso.