

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 for defendant shall not disturb the possession of the suit property from the plaintiffs and defendant has no right to to take possession of suit property by any illegal act by him or any related to him from the plaintiffs which is situated at Zarol Ta. Vaso bearing the Property No. No.213 which old No.2/158.

(2) The notices and summons was issued by the Court and it were duly served to the defendant. The defendants has appeared before the court through an Advocate. The defendants have submitted their written statement vide exhibit-15. The plaintiff has submitted documents vide mark-3/1 to 3/26. The defendants have also submitted documents vide mark-24/1 to 24/20.

(3) Heard the Ld. Advocate for the plaintiff. He has argued as per application for temporary injunction. He further submitted the suit property is belongs to plaintiffs and their

ancensetral Father and plaintiff's great grand father purchased this land from the government since last 45 Years. Defendant has no right over the suit property. He further contended that, there is prima facie case in favour of the plaintiff against defendants and the balance of convenience is also in his favour. He further contended 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. Ld. Adv. of defendants contended that there is a dispute between the plaintiff and defendants. Plaintiffs have no right in the suit property. The suit property is belongs to defendant only. Hence, the present application for temporary injunction should be dismissed. The 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 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 is belongs to defendant only. It also appears from the document produced vide mark-24/1 that the name of the defendant is written in the Akarni Patrak. Plaintiffs did not produce any documents which shows that they are the absolute owner of the

suit property. As per the document produced by the plaintiffs wide Mark-3/1 to 3/20, it appears that plaintiff paid fees in for Property No.188 wide Mark-3/10 and others. Here disputed land bearing the Property No. No.213 which old No.2/158 which is mentioned in the plaint is belongs to defendant as per the mark-24/1. So, it is transpired that plaintiffs did not submit his documents which shows that they are the owner of suit property as he prayed for.

(7) The plaintiff has filed this suit for declaration that the defendants shall not disturb the possession over the suit properties and defendants has no right over the suit property and for perpetual injunction same prayed as per suit. Here, The suit property is belongs to the defendants only as per the mark-24/1. Even, plaintiff did not succeed to show that he has having conscious possession of suit property. As per the mark-3/1 which is produce by the plaintiff, its transpires that the documnet is realted to government land. Hence, plaintiff can not get the relief as he is seeking for. From the record of the case, plaintiff did not submit any documents which shows that he has the conscious possession of the suit property and they have

right to file a suit against defendant. Looking to the record, it appears that the plaintiffs have not produced anything to prima facie show that the suit property is belongs to them and they have conscious possession of the suit property. So, the plaintiffs can not be said to have prima faice proved that the suit property which is belongs to them. Further more, it is well settled law that no injunction can be granted in favour of plaintiff who restraining others from entering into their property.

(8) So in view of the aforesaid discussion and reasons, it transpires to this Court that the plaintiff has failed to establish prima facie case in his favour which would entitle him to have interim injunction. And, it is well settled law that if no prima facie case is established, in any case, one shall not be entitled to any kind of interim relief even if the aspect of balance of convenience and irreparable injury are in favour of the plaintiff. Furthermore in this connection, it has been held by the Hon'ble Apex court in para-13 of its pronouncement in "**Kashi Math Samsthan v. Srimad Sudhindra Thirtha Swamy**" reported in AIR 2010 SUPREME COURT 296 that,

"It is well settled that in order to

obtain an order of injunction, the party who seeks for grant of such 8 R.C.S No647/2014 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 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 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".

So in view of aforesaid reasons, the application for temporary injunction is liable to be rejected. Hence, this court declines to grant an application for temporary injunction filed by the plaintiff. Under such circumstances, I hereby pass following order in the interest of justice.

ORDER

- The application for temporary injunction filed by the plaintiff is hereby **rejected**.
- No Order as to Cost.

Pronounced and signed today in an open court on 05th December, 2020.

Date:- 05/12/2020

(Rachit Kamleshbhai Trivedi)

Place:- Vaso

Principal Civil Judge,
Code No. GJ01216
Vaso.