

Order below exh-5

1. Heard ld. Advocate for both the parties. Read this application. No reply has been filed by other side. Looking to the pleadings and other papers on record. The present application of exh-5 has been filed by the plaintiff as per Order 39 Rule 1 and 2 of The Code Of Civil Procedure, 1908 (herein after referred to as 'code') for interim injunction.
2. Now first going through exh-5 application of plaintiff in which plaintiff has submitted that, Plaintiffs and defendant no.6 and 7 having ancestral property bearing khata no.177, survey no.472 admeasuring 1-15-58 acre guntha at Khuni village(hereinafter refer to as disputed property). Plaintiff stated that, plaintiffs and defendant no.6 and 7 has equall right over the disputed property. But defendant is trying to encorch the disputed property without any lawfull right. But defendant dined to make intrreupcion. Therefore on 25/9/2018 plaintiff has filed police complaint against the defendant no.1 to 5 and thenafter plaintiff has sent legal notice on 26/10/2018 to defendant. Therefore plaintiff has to filed this suit as well as this present application.
3. Agaisnt that notice has been duly served to defendants. But defendant has not remain present to file his written statement. Therefore right of defendant no.1 to 5 has been closed. However defendant no.6 and 7 has

not filed any reply.

4. Now on perusing the pleadings of both the sides as well as oral arguments, following issue are raise before this court. Which deserves the court cosnideration are as follows.

Following issues are arising for determination of the present application:-

1. Whether plaintiff proves his prima-facie case?
2. Whether balance of convenience lies in favour of the plaintiff?
3. Whether irreparable loss or injury will be caused to the plaintiff, if injunction sought for is not granted?
4. What order?

My findings for the above stated issues are as follows:-

D e c i s i o n

- (a) Affirmative,
- (b) Affirmative
- (c) Affirmative,
- (d) As per final order.

My reasons for the above decision are as follows:-

Issues no. 1 to 3

My reasons for issues no.1 to 3 are inter-connected with each

other. So to avoid unnecessary elaboration and repetition, it will be easy and convenient to decide and discuss together and collectively under at one head.

- Ld. Advocate for the plaintiffs has submitted in oral as well as written argument at exh-14 that, Plaintiffs and defendant no.6 and 7 having ancestral property bearing khata no.177, survey no.472 admeasuring 1-15-58 acre guntha at Khuni village. Plaintiff stated that, plaintiffs and defendant no.6 and 7 has equal right over the disputed property. But defendant is trying to encroach the disputed property without any lawful right. But defendant tried to make interruption. Therefore on 25/9/2018 plaintiff has filed police complaint against the defendant no.1 to 5 and thereafter plaintiff has sent legal notice on 26/10/2018 to defendant. Therefore plaintiff application must be granted and defendant's application liable to be rejected.
- While on other hand nobody remain present for arguments.
- After hearing both the sides at length, on perusing the record, the only dispute is that, whether defendant encroached in disputed property without any lawful right. Now looking to the documents produced by plaintiff. Plaintiff has produced at mark 3/5 i.e. mutation entry 2510 for heirship. On perusing this document it appears that,

plaintiffs and defendant no.6 and 7 has ancestral interest in disputed property.

However at this stage it is not proper to ascertain the rights of the parties. But on perusing the record produced by both the parties this court is satisfied with the argument made by Ld Adv for the plaintiff. Therefore this court believes that plaintiff showed his prima-facie case and balance of convenience in his favour and irreparable loss caused to plaintiff if injunction not granted.

- Here it is necessary to refer the provision of the 'code' and what is the purpose of the provisions of order 39 rule 1 and 2 the text of provisions reproduced below for ready reference as under:-

Order 39 Rule 1:- 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 or dispossesses, the plaintiff or

otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying any preventing the wasting, damaging, alienation, sale, removal or disposition of the property I[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 the disposal of the suit or until further orders.

Order 39 Rule 2:- *Injunction to restrain repetition or continuance of breach.*

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract to relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security,

or otherwise, as the Court thinks fit.

As per provisions of Order 39 Rule 1 if the defendant threatens or intent to remove or dispossess the plaintiff from his property or threatens or dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to property in dispute under such circumstances the court may grant the application of interim injunction.

- In view of the above provision of the 'code' as well as principle laid down by the apex court at this stage present court has to look at only, whether plaintiff has proved his prima faice case, balance of convenience in his favour and to show irreparable loss cause to him, if interim injunction not granted. Here in this case on hand after considering the arguments from both the side as well as peruse the recored. This court finds that, plaintiffs has succeed to fullfill all three conditions in his favour to obtain intreim injunction. However to ascertain the rights of parties is matter of evidence. Therefore this court reply issue no.1 to 3 in **affirmative**.

Issue No.4

As discussed above issue no.1 to 3 are decided in affirmative. Therefore this court replies this issue no.4 accordingly and in

consideration of which I passed the following order.

ORDER

- The present application of the plaintiff is hereby partly allowed.
- This court directed both the parties to maintain 'status quo' position of the disputed property till the final disposal of suit.
- No order as to cost.

Pronounced and signed in the open court today on 26th day of April, in the year of 2019.

Date:-26-04-2019.

Place:-Sevaliya.

[Atul Mohanbhai Vasava]
Principal Civil Judge,
Galteshwar At-Sevaliya.
(Judge Code.GJ01117)