

ORDER BELOW EXHIBIT 5 IN REGULAR CIVIL SUIT

NUMBER 30/2017

1. The present application is filed by the plaintiff for temporary injunction against the defendants restraining the defendants from entering upon the suit property in any manner till the final disposal of the suit. The defendants had not filed reply vide and thus the rights were accordingly closed.

2. This Court has gone through the record and pleadings of the learned Advocate for plaintiff. To adjudicate the application following points for determination may arise.

1. Whether the plaintiff show his *prima-facie* case?
2. Whether the Balance of convenience is in favor of the plaintiff?
3. If injunction would not be granted than irreparable injury will cause to the plaintiff?
4. What order?

3. My answer regarding points for determination:

- [1] In Affirmative.
- [2] In Affirmative.
- [3] In Affirmative.
- [4] As per final order.

::REASONS AND FINDINGS::

4. As all the issues are interrelated and interconnected, it is in the interest of justice to deal with all the issues together. As per order 39 R 1 and 2 of the Code of Civil Procedure, the temporary injunction can be granted by a court in the following cases:

*“(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.”*

5. The power to grant a temporary injunction is in the discretion of the court. This discretion however,

should be exercised reasonably, judiciously and on the legal principles. Injunction should not lightly grant as it adversely affects the other side. Generally, before granting the injunction, court must satisfied about the following aspects namely, *prima-facie* case, irreparable injury and balance of convenience.

6. The first rule is that the applicant must make out a ***prima facie case*** in support of the right claimed by him. The court must be satisfied that there is a bona fide dispute raised by the applicant, there is strong case for trial which needs investigation. A *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a *prima-facie* case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.

7. Existence of the *prima-facie* case alone does not entitle the applicant for a temporary injunction, but the applicant must satisfy the court that he will suffer ***irreparable injury*** if the injunction as prayed for is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

8. Third condition for granting interim injunction is that the ***balance of convenience*** must be in favor of the applicant. In other words, court must be satisfied that the comparative mischief hardship or inconveniences which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

9. At this juncture, this court is of the view to quote celebrated and remarkable observation by **Lord Diplock** in ***American Cyanamid Co. V/s. Ethicon Ltd*** **1975(2) WLR 316,**

“The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be

adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favor at the trial. The court must weigh one need against another and determine where the balance of convenience lies."

10. To prove the contentions of the present application, the plaintiff has to *prima facie* prove that he is the owner of the suit property i.e. Revenue Survey number 564/1 and 564/2. It is the say of the plaintiff that he had purchased the said properties from the father of defendant number 1 to 4 and had relied upon mark 3/2 and 3/3. It is the say of the plaintiff that the deceased father of defendant number 1 to 4 was having Revenue Survey number 564/1 and 564/2 through ownership but due to mistake of fact, Revenue Survey number 563 is typed in the document upon which appeal was filed. It is stated that the Revenue Survey number 563 is of the ownership of defendant number 5. The copy of order of Revenue Authority is produced on record vide mark 3/1

which shows that there was typographical mistake in the document. It is also evident from the record that the plaintiff is in possession of Revenue Survey number 564/1 and 564/2 since long and not in Revenue Survey number 563. Thus, as the other side had not appeared before this court, there is no reason to disbelieve the fact stated by the plaintiff. Therefore, this court is of the view that the plaintiff had succeeded in proving his *prima facie* case as when the rectification came to the knowledge of the plaintiff, he had approached the appropriate authority for rectification of the same. Thus, it seems to this court that the plaintiff had succeeded in proving his *prima facie* case before this court.

11. The second and third point which is to be decided while deciding the injunction application is regarding the balance of convenience and irreparable injury. Before granting temporary injunction, this court must be satisfied that the comparative mischief/hardship or inconveniences which is likely to be caused to the plaintiff by refusing the injunction will be greater than that which is likely

to be caused to the opposite party by granting it. In the present matter, the balance of convenience and irreparable loss also favours plaintiff as the plaintiff had paid sum of amount to the deceased father of defendant number 1 to 4. Therefore, taking the discussion into account, this Court answers Issue No. 1 to 3 in Affirmative and Issue No. 4 shall follow the final order:-

::ORDER::

- The present application is hereby allowed.
- The defendant No. 1 to 4 are hereby restrained from transferring, alienating or creating any right, title or interest of any third party and also not to create any charge over the said two properties i.e. on Revenue Survey number 564/1 and 564/2 of *Bibar* Village, Nakhatrana till the final disposal of the suit.
- The defendant No. 1 to 4 are hereby restrained from creating any hindrance in the peaceful possession of plaintiff on Revenue Survey number 564/1 and 564/2 of *Bibar* Village, Nakhatrana till the final disposal of the suit.

- No order as to costs.
- Parties are directed to co-operate in expeditious trial.

Pronounced and declared in the open Court on this 27th day of Month July of Year 2022.

27/07/2022
Nakhatrana

(Romit Anilkumar Agrawal)
Principal Senior Civil Judge
Nakhatrana

GJ0933