

Order Below Exhibit- 5

- (1) Read the application, perused the record and heard the learned Advocate for the plaintiffs Mr. D. K. Bhoi and learned Advocate for the defendant Mr. D. V. Vankar.
- (2) The plaintiffs had filed the present suit for the partition of the suit property with injunction for the suit-property situated at City Survey No.3608 the measurement 4412.90 Sq. mtrs. residential house situated at Village Lunawada. With the suit plaintiffs had filed present interim injunction application under Order 39 Rule 1 and 2 read with Section 151 of C.P.C.
- (3) The brief facts of the plaintiffs' suit and interim injunction application is that the plaintiffs and defendant have the joint property. As per the submission of the plaintiffs they had purchased residential house by registered sale-deed on the First Floor of the house. The plaintiffs is residing at first floor and the defendant is residing on the ground floor and there is only one bathroom and toilet which are situated at ground floor. He also stated that four-corner of the suit-property. He further stated that the defendant had only 1/3 share in the suit-property and the plaintiffs having 2/3 share in the suit-property but defendant prevent the plaintiffs and his family members to use bathroom and toilet and therefore plaintiffs uses public toilet and open courtyard for bathroom therefore, he has filed the present suit for partition for the suit-property and permanent injunction that the defendant not prevent them for using bathroom and toilet situated at ground floor.

- (4) In the present interim injunction application plaintiffs also claimed the remedy that in the disposal of the present suit defendant or their agents not prevent them for using the bathroom and toilet of the suit-property.
- (5) On the other hand, summons and notices served to the defendant and defendant present through his Advocate and he filed the reply of the plaintiffs' suit vide Exh.15 and in that reply the defendant denied that facts of the plaintiffs' suit and stated that plaintiffs had filed false suit and present application. The plaintiffs have no right to file such kind of application and he denied the facts of the plaintiffs' suit. He also stated that in his reply that initially they have purchased the property in joint part after that he had paid the amount to the plaintiffs and now plaintiffs having no share in the suit-property and he i.e. the defendant is the only owner of the suit-property but on the ground of mercy he permitted his brother i.e. plaintiff to stay in house therefore, the plaintiffs have no right to suit-property and the defendant prayed to reject the plaintiffs' application.
- (6) Heard the learned Advocate for the plaintiff Mr. D. K. Bhoi and he argued that there is joint property of the plaintiffs and defendant to show that he produced sale-deed of suit-property he stated that the suit-property purchased in the year 1986 from Vinodkantaben and Chandra Shankar Chotalal Dave and he also produced assessment index of the suit-property Ward No.629 wherein the defendant etc. name are mentioned therefore, he prayed for allow the application.
- (7) The defendant had argued that the plaintiffs have no right in the suit-property and only the defendant is the sole owner of the suit-

property as defendant had paid the amount of plaintiffs' share to the plaintiffs so the plaintiffs have not right, title or interest in the suit-property therefore, prayed to reject the plaintiffs' application.

- (8) Looking to the fact of the case and settled principle of law that while deciding the interim injunction application court has to see that :-
1. Whether the plaintiffs' suit is prima facie ?
 2. The balance of convenience is in favour of the plaintiffs ?
 3. Whether irreparable loss occurred to the plaintiffs if interim injunction is not granted ?
- (9) If all these three questions are in favour of the plaintiff then at the discretion of the court court can allow the interim injunction application or grant the interim injunction relief.
- (10) In view of the above settled principle looking to the plaintiffs' case even if we believe the version of the plaintiffs then the joint property issue is there and if joint property is there then every co-owner of the suit-property have equal right in the suit-property till the partition of the property take place till then every co-owner is entitled to use the entire property and if the injunction granted in favour of the plaintiffs then defendant may not use his property. In a case the Hon'ble Punjab and Haryana High Court has held that *"Once the suit land is not partitioned and the parties are co-sharers and co-owners, each and every co-sharer will be considered to be in possession of every inch of land."*
- (11) So in the joint property, the plaintiffs are not entitled to take interim relief in view of the settled provision of law in his favour

and therefore in the common house the plaintiffs are not entitled to get injunction relief against the defendant and defendant is entitled for using the suit-property as a co-owner vis-versa. Therefore, I am of the opinion that plaintiffs' suit is neither prima facie nor the balance of convenience is in favour of the plaintiffs. Moreover, no irreparable loss is occurred to the plaintiffs if injunction is not granted in their favour. Therefore, in the interest of justice I pass the following order.

O R D E R

1. The plaintiffs' interim injunction application is hereby rejected.
2. No order as to cost.

Signed and pronounced in the open court today
on this 18th Day of October, 2023.

Date : 18-10-2023
Lunawada.

(M. M. Parmar)
2nd Additional Sr. Civil Judge,
Mahisagar @ Lunawada.
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