

**Order Below Exhibit- 5**

- (1) Read the application, heard the both side of learned Advocates and perused the record. The plaintiff had filed suit for the declaration and permanent injunction for the suit-property situated at Village Ghantiyada for the old Survey No.87 and new Survey No.59 admeasuring hectare 0.55.64 wherein suit plaintiff had filed the present interim injunction application and under Order 39 Rule 1 and 2 read with Section 151 of C.P.C.
- (2) As per the brief facts of the suit and present interim injunction application are that the defendants are joint owners of the suit-property and they are cultivating the suit-property and the property is the ancestral property and they had got the property by partition. The defendant No.1 is the brother of the plaintiffs and he tried to snatch the property from the plaintiffs. They also stated that if plaintiffs succeeded to snatch the possession then they will suffer irreparable loss therefore, they prayed to allow their application and claimed the remedy that till the disposal of the suit defendants do not prevent them to cultivate the suit-property till the disposal of the suit.
- (3) Summons and notices served to the defendants and defendants present through their Advocate before the court and he filed the reply of the plaintiffs' suit vide Exh.19 and in his reply he denied plaintiffs' suit and stated that plaintiff No.1 was serving in MGVCL, the plaintiff No.2 serving in the Beej Nigam and plaintiff No.3 is the Employee of the S.T. Department and serving as a Conductor though all three plaintiffs are in Govt. service and they are not residing at their native place and defendants having possession of

the suit-property and only the defendants cultivated the suit-property but now as all the plaintiffs retired from their services. They came to the native place and now tried to snatch suit-property from the defendants therefore they prayed to reject interim injunction application.

- (4) Learned Advocate for the plaintiffs Mr. P. D. Pathak had filed written argument vide Exh.25 and in his argument he stated that has produced documents by Mark3/1 to 3/41 and in that documents he had also produced the documents of suit-property extract Village namuna No.7/12 and other property survey number of properties. He stated that after the demise of their father defendants jointly got property by partition and defendants have no right, title or interest in the suit-property and their names are also stated that in the revenue record and therefore their suit is prima-facie, balance of convenience in their favour and irreparable loss is occurred to them if the injunction is not granted in their favour. He prayed to allow the interim injunction application.
- (5) The learned Advocate for the defendants Mr. N. V. Updhyay had filed the written argument vide Exh.26 and in his argument, he stated that the defendants cultivating the suit-property and suit-property is joint property of the plaintiffs and defendants. He also stated that from year 1981 defendants having possession of the suit-property and therefore the adverse possession also in favour of the defendants. He also stated that all the three plaintiffs are Govt. servants and financially sound therefore in collusion with Revenue Authority they deleted the names of the defendants from the suit-property no partition was taken place between the plaintiffs and defendants for the suit-property and therefore he prayed for

rejection of interim injunction application. The defendants also stated in his arguments that all the plaintiffs have assaulted on defendants and dismantled the eye of the defendant No.1. They frequently quarreled for snatching the possession of the suit-property from the defendants therefore defendants prayed for rejection the plaintiffs interim injunction application.

- (6) 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 ?
- (7) If all these three questions are in favour of the plaintiffs then at the discretion of the court court can allow the interim injunction application or grant the interim injunction relief.
- (8) In the interim injunction application looking to the remedy plaintiffs claimed that they were cultivating the suit-property land Survey No.59 and the survey number are in their possession and he prayed that defendants do not disturb their possession but so far as the possession of the suit-property is concerned, no document was produced from the plaintiffs' side merely in the revenue record their names village extract namuna No.7/12 that does not mean that they are having the actual possession of the suit-property. On the other hand, defendant stated that he cultivating the suit-property from many years so prima-facie it is not clear that the plaintiffs having possession of the suit-property. Moreover, the Court Commissioner's

Report produced by the Court Commissioner vide Mark-22/1 in his Report the Court Commissioner has mentioned the four-corners of the suit-property and crop which was standing in the farm was stated but he has not mentioned that who had cultivated that farm and whose crop is there ? So, from the record it does not appear that plaintiffs or defendants who are in actual possession of the suit-property and therefore the plaintiffs' suit is not prima-facie. Moreover, in the case of 2012 (0) AIJEL-SC 5107 SUPREME COURT OF INDIA (BOMBAY HIGH COURT) Hon'ble Judges: Dalveer Bhandari, H.L.Dattu, Deepak Verma ***Maria Margarida Sequeria Fernandes Versus Erasmo Jack De Sequeria(Dead) Through L.Rs.*** it was decided by the Hon'ble Apex Court that Ordinarily, three main principles govern the grant or refusal of injunction :-

*a) prima facie case;*

*b) balance of convenience; and*

*c) irreparable injury, which guide the Court in this regard.*

*In the broad category of prima facie case, it is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must be governed by the prima facie case. In grant and refusal of injunction, pleadings and documents play vital role. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.*

*(a) who is or are the owner or owners of the property;*

*(b) title of the property;*

*(c) who is in possession of the title documents;*

*(d) identity of the claimant or claimants to possession;*

*(e) the date of entry into possession;*

*(f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;*

*(g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;*

*(h) If taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;*

*(i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;*

*(j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and*

*(k) basis of his claim that not to deliver possession but continue in possession.*

- (9) From the above settled principles, it appears that the plaintiffs suit is not prima-facie and balance of convenience is not in favour of the plaintiffs and plaintiffs failed to show that if the interim injunction application is not granted in their favour they will suffer irreparable loss. Therefore, in the interest of justice, this Court passes 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 09<sup>th</sup> Day of November, 2023.

**Date : 09-11-2023**  
**Lunawada.**

**(M. M. Parmar)**  
2<sup>nd</sup> Additional Sr. Civil Judge,  
Mahisagar @ Lunawada.  
**{GJ00881}**