

ORDER BELOW Exh:5

(1) Hasmukhlal Chandulal Doshi,
(2) Imtiyaz Abdul Majid Malvaniya,
(1) Hasmukhbhai Malabhai Pagi
Both are R/O Lunawada,
Dist. Mahisagar.....PLAINTIFF

V/S.

(1) Saifi Hospital and Nursing Home Through Trusty,
R/O Godhara Modasa Road, Lunawada. Dist. Mahisagar
(2) Joharbhair Yusufbhair Divanaji,
R/O Tirgarvas, Lunawada
(3) Abdealibhair Roshanali Limdiyavala,
R/O Burhani Society, L Lunawada.....DEFENDANT

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APPEARANCE:

L.A. FOR THE PLAINTIFF MR.J.A.PATHAK

L.A. FOR THE DEFENDANT.MR. H.A.MOJANIDAR

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ORDER BELOW EXH: 5

1. The plaintiff has filed the present suit for declaration. The plaintiff has also preferred the present application with the suit for declaration and seeking relief that the defendant may please be restrained by temporary injunction from interruption of peaceful possession of plaintiff on suit property till the final disposal of present suit.

2. At the time of filling of the suit summons and notice issued to the defendants which has been duly served to the defendants. They have filed their written statement vide Exh:15. The defendants have denied all averment of the facts of plaint and contended that all the contentions stated in the plaint are false and also contended that the plaintiffs do not have right to file the present suit. It is also contended that they do not have issue regarding the tenancy agreement dated:16/04/2022 and plaintiff no:1 has given cheque

no:587 of the HDFC Bank of Rs. 30,648/- but the rest of the facts mentioned in all the paragraphs of the plaint is not correct. It is also contended that the defendants have filed a criminal case against them under the provision of S. 4(3) of the Land Grabbing Act vide Case no:3/2024. It is also contended that the plaintiff no:1 Hasmukhlal Chandulal Doshi was the legal tenant of them for shop no:18 and shop no:19 but by taking big amount from Imtiyaz Abdulmajid Malvaniya has sub-let the said suit property. It is also contended that Hasmukhlal Chandulal Doshi has wrapped up his business from there and has went to place at opposite Lunawada Bus Stand and below the Hotel Mayur and has started his business and in the Year-2017 the plaintiff no:1 has purchased a two story shop near Drashti Eye Hospital and by sitting over there doing his business. It is also contended that after this the shop no:18 and 19 are in possession of plaintiff no:2 as sub-let tenant. It is also contended that the defendant no:2 has break down the wall between shop no:18 and 19 and has made a single shop and in it the defendant no:2 has started doing business of groceries. It is also contended that the plaintiffs neither have informed nor have taken the consent of the defendant before sub-letting the said shops and by that has given illegal possession. It is also contended that due to that reason the defendant has filed a complaint against the plaintiffs under the provision of Land Grabbing in February-2024. It is also contended that as soon as the plaintiffs comes to know about the complaint, considering the seriousness of the said complaint the plaintiffs have filed the present suit in the September,2024 and hence the present suit is illegal and required to be dismissed. It is also contended that as the plaintiff no:1 has wrapped up his business by withdrawing his essentials and has left the possession from the shop no:18 and 19, he did no longer remains the tenant of the defendants and hence he is not entitled to claim any relief under the Rent Act. It is also contended that the facts submitted by the plaintiffs that they are doing business by

partnership is quite laughable and the submission that the plaintiff no:1 is an active partner in the business is only a defence in the present suit and the case under Land Grabbing. Then it is contended that if the partnership deed is made then also has to be only for the business only and here on the basis of the deed the plaintiffs considered themselves as partners is also an un-registered deed only was executed with intention to fraud. It is also contended that the plaintiff no:1 has hide the fact that he left his possession over the shop no:18 and 19 and has started his business at other place from the Court. It is also contended that the plaintiff no:1 does not have paid his due rent and hence has breach the condition of the tenancy agreement and after receiving notice also has failed to re-pay the due rent and in that way indirectly has the ownership right of the defendant. It is also contended that the partnership deed presented by the plaintiff is also doubtful as it contains two different dates and as the plaintiff is no remains a tenant is not entitled to get the relief claimed and if the relief be granted then the plaintiff will take undue advantage and will modify the structure of the suit property and will made hindrance and will use as shield in proceedings before the Ld Collector. It is also contended that as the plaintiffs does not have prima facie case, the balance is in favour of the defendants and if the relief claimed by the plaintiff be granted then the defendants will suffer an irreparable loss, which can not be compensated in terms of money and hence urge to reject this application for injunction with cost.

3. Under the circumstances the following issues are framed for deciding the present application
 1. Whether the plaintiff is entitled to get the interim relief of injunction against the defendants till final decision of the suit as prayed ?

- 2 What Order.?
4. The finding of the above issues are as under with the reasons thereof
 1. In the Negative
 - 2 As per final order.

REASONS

5. Issues no:1:

The plaintiff has preferred this application under order 39 rule 1 & 2 of Civil Procedure Code therefore it is for the plaintiff to establish the well known three principles like prima facie case, balance of convenience and if the relief claimed is refused which cannot be compensated in terms of money by affidavit and documents. The plaintiff has declared on affidavit that in the Lunawada City Survey no:177 and 180 of Revenue Survey no:36, there are a hospital by name of Saifi and some shops been constructed, which are of 20*10 and the shop no:18 in Ward no:7 of Nagarpalika is the suit property. It is also alleged that the suit property was given on rent on executing a rent agreement to plaintiff no:1 by accepting deposit of Rs. 52,000/- on date:16/4/2002 by the defendant. It is also alleged that he is still in possession of it. It is also alleged that the plaintiff no:1 is doing business of groceries but the place of suit property is not appropriate for the said business and hence the plaintiff no:1 and the plaintiff no:2 have executed a partnership deed on date:23/10/2020 and decided to start a business of seeds and since the year-2020 the plaintiff no:1 and 2 are running their partnership firm in the name Malvaniya Brothers jointly in the suit property and the plaintiff no:1 is an active partner. It is also alleged that the

plaintiff no:1 has repaid the due arrears of rent by sending a cheque no:587 of Rs. 30,648/- on 31/3/2019, which was accepted. It is also alleged that after that on date:24/02/2022 the defendants through their LA have sent a registered notice in which due to reason of sub-letting, rent from date: 1/4/2918 to date:28/2/22 of 47 months of Rs. 1,21,446/- was demanded and in answer of that the plaintiffs have calculate the amount, which happens to be of Rs. 96,552/-, which by a cheque no:372541 of The Lunawada Peoples Co.Op. Bank .Ltd. dated:8/3/2024 along with the reply has been sent. It is also alleged that the said cheque was not deposited by the defendants in their account. It is also alleged that in the notice date:24/2/22 the contention of sub-letting and permanent construction is being made but the defendant no:2 does not have been served any notice. It is also alleged that no suit under the rent act been filed after the reply of the notice dated: 8/3/22 been served. It is also alleged that no any order was passed on record of the trust regarding the serving of notice but in order to extract money from the tenants by giving them threat of involving them in false litigation the notices were been served. It is also alleged that if a proceeding on behalf of a trust has to be initiated then all the trustees have to be a party or by a legal order any specific trusty will be authorized for that. It is also alleged that all the trustees of this trust are living at Mumbai and are unaware about this case. It is also alleged that Joharbhair Yusufbhair Divanji is illegally started this litigation. It is also alleged that defendant no:1 trust is not registered before Cherity Commissioner of Mahisagar or Panchmahal and the suit property may be not even registered in the name of the trust. It is also alleged that the defendant no:2 and 3 are not trusty but are disguise and represents themselves as trustees and hence are joined as defendants. It is also alleged that recently they came to know that defendant no:2 has filed a case no:3/2024 under the provision of S.4(3) of the Land Grabbing Act but the provision of the said Act is not applicable on the tenant. It is also

alleged that the defendants are by using muscle power are in try of snatching away the possession if their illicit demands would not be fulfilled. It is also alleged that the defendants are giving them the threat of involving in false litigation to vacate the possession. Hence, there is sheer apprehension that the defendants will snatch away the possession of the suit property from the plaintiff without using legal recourse and hence, ultimately the plaintiffs have seeking relief as per para no.1 of this order.

6. In support of their case the plaintiffs have produced documentary evidence vide mark 3/1 to 3/10. On perusal of mark 3/1 is copy of Property Card of City Survey no:177 and 180. On perusal of mark 3/2 is a Xerox Copy of Tenancy Agreement. On perusal of mark 3/3 is receipt of receipt of deposit amount. On perusal of mark 3/4 is Xerox Copy of deposition of rent from date:1/4/18 to date:31/3/19. On perusal of mark 3/5 is the copy of partnership agreement. On perusal of mark 3/6 is the copy of notice given by the defendants. On perusal of mark 3/7 is the copy of reply given by the plaintiff no:1. On perusal of mark 3/8 is the copy of cheque no:372541 send by plaintiff no:1 along with the reply. On perusal of mark 3/9 is the copy of application filed by defendant under Land Grabbing. On perusal of mark 3/10 is the copy of reply filed by the plaintiffs in Land Grabbing.
7. On the other hand, In support of the defence the defendants have produced documentary evidence vide mark 16/1 to mark 16/4 and mark 27/1 to mark 27/3. On perusal of mark 16/1 is the copy of Property Card of City Survey no:178/50 of plaintiff no:1. On perusal of mark 16/2 is the copy of Property Card of City Survey no:178/57 of plaintiff no:1. On perusal of mark 16/3 is an original photo of shop of plaintiff no:1 at Lunawada-Modasa Road. On perusal of mark 27/1 is the copy of an order of Ld.Collector to file an F.I.R regarding the suit property. On perusal of mark 27/2 is the

copy of 'Suchipatra' of Lunawada Police Station, CR no:0074/25. On perusal of mark 27/3 is the copy of F.I.R regarding CR no:0074/25.

8. Upon such facts and documents on record the plaintiff is claiming injunction relief which is a discretionary relief. In the present suit the plaintiffs are claiming the relief of injunction by virtue of an agreement of tenancy and on the other hand the defendants denying the tenancy right of the plaintiff as the actual tenant qua. the present plaintiff no: 1 has left the property of tenancy and has sub-let the premises in the pretext of a partnership deed with plaintiff no:2. But here in the case the defendant comes with a specific defence that the plaintiff has breached the condition of rent note and making a permanent destruction and making a land grabbing. Considering the facts on affidavit and the contention of defence read with the document on record. From the facts and documents on record it is admitted that the defendant has served a notice of eviction of suit property. The defendant has also preferred an application before the Collector for land grabbing made by the plaintiff. It is also admitted facts that as per Mark:27/1 the Collector has after making inquiry ordered to register a complaint in respect of land grabbing against the plaintiff. Under the circumstances the plaintiff is claiming discretionary relief of interim injunction to protect his possession under the Civil Procedure Code. It is true that civil court is competent to decide right, title, interest and legal possession. Therefore, here in the case two statutes are in a way for deciding this application. One is under Civil Procedure Code and Second is under The Land Grabbing (Prohibition) Act. The interim relief of injunction is governed under Civil Procedure Code but here in the case two jurisdictional powers are centering around for consideration. For the convenience Section 9 of The Land Grabbing (Prohibition) Act required to refer here which is as under

Section 9 of The Land Grabbing (Prohibition) Act

- (1) The Special Court may, either suo moto or on application made by any person, or any officer authorized by District Collector, take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit.
- (2) **Notwithstanding anything in the Code of Civil Procedure, 1908, any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of any land grabbed under this Act, shall, subject to the provisions of this Act, be triable in the Special Court and the decision of Special Court shall be final.**
- (3) Notwithstanding anything in the Code of Civil Procedure 1908, the Special Court may follow its own procedure which shall not be inconsistent with the principles of natural justice and fair play and subject to the other provisions of this Act and of any rules made thereunder while deciding the Civil liability,
- (4) Notwithstanding anything in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act.
- (5) The Special Court shall determine the order in which the civil and criminal liability against a land grabber be

initiated. It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceedings are completed. **The evidence admitted during the criminal proceeding may be made use of while trying the civil liability. But additional evidence, if any, adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability.** Any person accused of land grabbing or the abetment thereof before the Special Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charge made against him or any person charged together with him in the criminal proceeding:

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made the subject of any comment by any of the parties or the special court or give rise to any presumption against himself or any person charged together with him at the same proceeding.

- (6) Every case under sub-section (1) shall be disposed off finally by the Special Court, as far as possible, within a period of six months from the date of institution of the case before it.
- (7) **Every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land**

grabbed shall be binding on all persons having interest in such land.

- (8) **When an offence of land grabbing is proved, the Special Court may if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property.**
- (9) It shall be lawful for the Special Court to pass such an order as it may deem fit to advance the cause of justice. It may award compensation in terms of money for wrongful possession of the land grabbed which shall not be less than an amount equivalent to the Jantri value of the land grabbed as on the date of the order and profits accrued from the land payable by the land grabber to the owner of the grabbed land and may direct re-delivery of the grabbed land to its rightful owner. The amount of compensation and profits, so awarded and costs of re-delivery, if any, shall be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a civil court, in any other case to be executed by the Special Court:

Provided that the Special Court shall, before passing an order under this subsection, give to the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard, and consider such representation and evidence.

Therefore this court is of the opinion that the present suit for relief which is exclusively relief of discretionary relief but considering above provision of Land Grabbing Act this Court is of the opinion of that when there is a special provision under the special statute

such jurisdiction should not be exercised by the civil court. Hence, the plaintiff fails to prove his prima facie case as before deciding this application the proceeding under Land Grabbing (Prohibition) Act is initiated parallel to civil proceedings hence balance of convenience is tilt in favour of defendant under the circumstances if this court exercise the jurisdiction of interim relief of injunction of which will defeat the above provisions of The Land Grabbing (Prohibition) Act as being a Special Court under the Act. Under the circumstances if at this stage this court is exercising its jurisdiction of discretionary relief will be deprived the right of defendant when a complaint under land grabbing act is registered as per document come on record otherwise the object of Special Act will be frustrated. This court is of the opinion that when the discretion is to be exercised it should be exercised in a judicial manner. Hence if any order of injunction is issued then irreparable loss caused to the defendant which cannot be compensated in terms of money under the circumstances this application deserves to be dismissed hence the **issue number 1 is decided in negative** and passes the following final order.

// O R D E R //

- ❖ The application of the plaintiff Exh.5 is hereby **dismissed**.
No order as to cost.

Sign and pronounced in open court today on this 20th March,2025

DATE : 20-03-2025
PLACE : LUNAWADA

K.M.BHATT
Addil. Civil judge,
Lunawada
GJ01559