

Order below Exh.5**In****Regular Civil Suit No.67 of 2022**

1. The plaintiffs have filed the present injunction application under Order 39 Rule 1 & 2 and Section 151 of the Civil Procedure Code for interim injunction restraining the defendant, his men or representative from constructing in any manner in the western side of City Survey No.806 of defendant till final disposal of Suit and thereby prayed for interim injunction. The plaintiffs have also prayed directing the defendant to remove whatever construction made over the Suit property and thereby maintain status quo. Thus, mandatory injunction has been prayed for by the plaintiffs against the defendant.

2. The defendant appeared through his learned Advocate and filed his Written Statement at

Exh.11 and prayed to dismiss the Suit as well as injunction application. The defendant has submitted that the Suit is required to be dismissed under Order 7 Rule 11 of the Civil Procedure Code. The defendant has denied the contentions raised and allegations made by the plaintiffs in the Suit as well as injunction application. The defendant has specifically submitted that he is the sole owner of residential property No.131/1 situated on City Survey No.818. It has been also submitted that for renovation of said residential property, the defendant has approached Sarpanch, Valam Gram Panchayat on 08/06/2021 for renovation of the said residential property. It has been further submitted that the defendant has constructed as per previous construction. The defendant has submitted that he has not created any right over Suit property. It has been further submitted that plaintiffs have got up the facts stated in the

Suit as well as in the injunction application. The defendant has submitted that he has all right to utilize his property. On the other hand the plaintiffs have obstructed the right of way of the defendant by making underground water tank. In view of the above facts of the case, it is prayed to dismiss the Suit as well as injunction application with cost.

3. The plaintiffs have filed Rejoinder at Exh.16 to the Written Statement filed by the defendant and denied the facts stated therein and prayed to allow the Suit as well as injunction application.
4. Learned Advocate for the plaintiffs has produced his Written Arguments at Exh.19 and prayed to allow the Suit as well as injunction application. Heard oral arguments advanced by the learned Advocate for defendant.

5. Considering the rival contentions and documents produced by both the parties, for the final adjudication of the present application, the following Issues arise for my determination.

ISSUES

1. Whether plaintiffs prove that, there is a prima-facie case in their favour?
 2. Whether plaintiffs prove that, if Exh.5 application is not granted, they will suffer irreparable loss or hardship, which cannot be compensated in terms of money?
 3. Whether the balance of inconvenience is in favour of the plaintiffs?
 4. What order?
6. My answers on the above referred Issues, due to the following reasons, are as under:-
- (A) In negative.
 - (B) In negative.
 - (C) In negative.

(D) As per final order.

7. As the Issue Nos. 1 to 3 is interconnected, to avoid repetition and for the sake of convenience and brevity, I discuss all these issues conjointly.

8. **ISSUE NOS.1 TO 3.**

Perusing the Suit as well as present injunction application, it is undisputed fact that the defendant is the sole owner and occupier of residential property bearing No.131/1 situated in City Survey No.818 of Mouje: Valam, Tal. Visnagar. In support of present application, the plaintiffs have produced copy of Property Card in respect of City Survey No.807 vide Mark 4/1, Property Card in respect of City Survey No.806 vide Mark 4/2, copy of Tracing of Map in respect of City Survey No.806, 807 and 808 vide Mark 4/3, copy of Measurement Sheet in respect of City Survey No.807 vide Mark 4/4 and Photographs

showing construction by the defendant vide Mark 4/5. The plaintiffs have also produced Report of Court Commissioner vide Mark 7/2. Perusing the documents produced by the plaintiffs, nowhere it is shown that the defendant has illegally constructed over the Suit property. The plaintiff has not challenged or objected regarding ownership of the property. Whatever construction has been made is in ownership of the defendant. Moreover, the plaintiffs have averred that the defendant has constructed without permission of the local authority and without authorized title. Also, perusing the Report of Court Commissioner produced at Mark 7/2 and Map produced along with the report produced vide Mark 7/3, nowhere it has been mentioned that defendant has constructed in the premises of the plaintiffs. Thus, plaintiffs, prima-facie, failed to show that construction of the defendant create any hindrance in the residential property of plaintiffs. The

plaintiffs also failed to show that the construction of the defendant is illegal and unauthorized. The plaintiffs have not produced any single document, which shows that construction of the defendant is illegal and unauthorized. However, the plaintiffs failed to show such facts prima-facie. It is well settled established principle of law that, to get interim injunction, the plaintiffs must have shown their strong prima-facie case, mere oral statements that construction of defendant is illegal, unauthorized and create hindrance in the residential property of plaintiffs, are imaginary in nature, which have no evidentiary support and does not constitute the strong prima-facie case. In such circumstances, the prima-facie case of the plaintiffs is not established. So far as issue of balance of convenience is concerned, as I have discussed above that, the plaintiffs failed to prove that construction of the

defendant is illegal and unauthorized and required to be restricted or removed. Hence, such kind of interim injunction, without reasonable apprehension and sufficient proof, may cause greater hardship to the defendant than the plaintiffs. Therefore, aliment of balance of convenience is not in favour of the plaintiffs. So far as the irreparable loss is concerned, it is nowhere it appears that, in absence of interim injunction, the plaintiffs would bear irreparable loss, which cannot be measured in terms of money. There is no documentary evidence produced by the plaintiffs to show that there would be any loss to the plaintiffs in absence of interim injunction. On the other hand, if such type of injunction be allowed, then the defendant would suffer great hardship and not the plaintiffs, and therefore, the balance of convenience is also not in favour of the plaintiffs. So far as the aspect of irreparable loss is concerned, it appears

that, such kind of loss, which is mentioned in the plaint, can always be defined in terms of money. Thus, the aspect of irreparable loss is also not satisfied.

Therefore, considering all the above parameters, it is very much clear that, the plaintiffs have no strong prima-facie case to get interim injunction. Further, the balance of convenience is also not in their favour and there is no apparent irreparable loss to the plaintiffs in absence of interim injunction. However, the dispute between the parties can be resolved after leading evidence and can be decided after full fledged trial. So far as the construction of the defendant is concerned, the same will be determined by the Court after leading full fledged evidence at the time of pronouncement of judgment. But, at present, it appears that, if the Suit premises will be kept in status-quo position then the purpose of law will be served

and Suit property will be preserved till final disposal of the Suit. In such circumstances, this Court proceed to pass the following order for this application.

FINAL ORDER

- The present injunction application Exh.5 is hereby dismissed.
- Both the parties are hereby ordered to maintain status-quo in respect of Suit property till final disposal of the Suit.
- No order as to costs at this stage.

Declared and pronounced in the open court today on this 18th day of January, 2024 at Visnagar.

[LALITKUMAR MEGHJIBHAI RATHOD]
Principal Senior Civil Judge, Visnagar.
UID Code No.GJ00844