

Joint Order below ex.5 & ex.15

- 1.The application vide ex.5 is filed by the Plaintiff under Order-39 Rule-1 & 2 read with Section-151 of the Code of Civil Procedure, 1908 for seeking temporary injunction restraining defendant from interfering with the plaintiff's possession of suit property bearing Muni. S. no.10022/1096/3 (old No.2/1096/3) (suit property in short) which are allegedly tenanted property. And another application vide ex.15 is also filed by him under Order-39 Rule-1 of the Code of Civil Procedure, 1908 for seeking mandatory injunction directing defendant to repair the particular portion of the said property allegedly damaged by the defendant.
- 2.The notice was issued by this Court to the defendant and it was duly served upon him. The defendant has appeared through his Ld. Advocate Mr.H.R.Pathan. Vide ex.18, Mr.Pathan filed his combined written statement against the plaint, ex.5 and ex.15 as well, denying the whole case of the plaintiff.
- 3.Heard the Ld. Advocate Mr.M.J.Prajapati appeared for the plaintiff at length. He argued as per his plaint. He argued that the suit property was agreed to give on rent to the plaintiff's grand father Mr.Tulsichand Lilachand Patel by the owner of the

suit property Mr.Navnitlal Chandulal Desai in the year 1997 vide a decree of the Court. To support his statement, he produced a copy of the *pursis* of agreement for the same with the decree of the Court vide mark-4/4 and mark-4/5 respectively. He argued that the agreement regarding the rented shop was made between his grand father and the owner of the said shop as above stated and thus, he has been using this shop since many years without any hindrances and doing his business of oil therein. He also produced the xerox copies of the receipts for rent paid to Mr.Navnitlal Chandulal Desai dtd.14/06/2017 and dtd.2/06/2019 vide mark-4/2 and mark-4/3 respectively. Furthermore, he argued that the defendant purchased this shop from the heirs of deceased Mr.Navnitlal Chandulal Desai. Again he argued that as the defendant has purchased the said property from the owners, he must be having the knowledge of our tenanted rights as per the maxim, buyers beware. After purchasing the suit property, the defendant has started to destroy other properties purchased with this suit property and due to that, his rented shop has been affected. He argued that the defendant has damaged his rented shop and thus, he has to come to the Court to get urgent temporary injunction order in this regard to save his daily business. He also argued that the defendant has no right to damage his rented shop and

thus, the defendant has breached his tortious liability by paying his negligence towards his rented shop. He further averred in his application vide ex.15 that the defendant has damaged his rented shop, which is in the possession of the plaintiff since years. The defendant has left a big gap on the top of the northern wall of the shop. To support his case, he also produced some photographs of the suit shop. Thus by relying on the agreement pursis vide mark-4/4 and the decree of this Court vide mark-4/5, he tried to put his case on safe corner. He vehemently submitted that he is in the possession of this shop since years, and the same condition is proved by the *panchnama* made and produced by the Court Commissioner vide mark-9/1 to mark-9/3 asked by the plaintiff to draw, just to show the real condition and his possession over the suit shop. Thus, he contended that there is prima facie case in favour of the plaintiffs against defendants and the balance of convenience is also in their favour. He further contended the plaintiffs would suffer irreparable loss if the injunction would not be granted in favour of plaintiffs. Hence prayed for temporary injunction vide ex.5 and also mandatory injunction vide ex.15 to order the defendant to repair the damage caused by him to his rented shop.

4. Heard the Ld. Advocate Mr.H.R.Pahtan for the

defendant at length. Ld. Advocate Mr.Pathan submitted his combined reply vide ex.18 for ex.5 and ex.15 as well. He vehemently opposed these application and the suit of the plaintiff. He denied the whole case of the plaintiff. He vehemently submitted that the suit of the plaintiff is bad for the necessary parties as the plaintiff has not joined the owners of the suit shop from whom he took this shop on rent as per the said of the plaintiff. He vehemently argued that the agreement pursis vide mark-4/4 had been made between Mr.Navnitlal Chandulal Desai and Mr.Tulsidas Lilachandbhai Patel in the year of 1997, but in the year 1997, not only Navnitlal Chandulal Desai was the owner of this shop, there were other heirs too for this shop. But, the agreement deed was made between these two parties only. Again he vehemently opposed the say of the plaintiff that Mr.Tulasidas Lilachand Patel was his grandfather as he did not produce his genealogy to prove his case. He produced documents vide mark-19/1 to mark-19/6 to contravene the case of the plaintiff. Thus, by denying the whole case of the plaintiff, he contended that there is no prima facie case can be said to have been made out by the plaintiff in his favour and the balance of convenience is also not in his favour. And if the temporary injunction would be granted in favour of the plaintiff, the defendant will have to suffer

irreparable injury and it would cause him more hardship than the plaintiff. Hence, prayed for the rejection of the application for temporary injunction and the mandatory injunction application with heavy cost.

5. There are three basic principles for granting or refusing the temporary injunction, i.e., 1) *prima facie* case in favour of the party seeking temporary injunction, 2) balance of convenience in favour of such person and lastly, 3) there must be an irreparable loss which is likely to be caused to such person if injunction is not granted to such person. An injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. In addition to these three basic principles for granting or refusing the injunction, the conduct of the person seeking injunction should also be taken into consideration because the granting of injunction is an equitable relief and is drastic or serious order. There are two basic maxims of equity which are important to be considered at the time of deciding injunction application; 1) "He who seeks equity must do equity" and 2) "He who comes to equity must come with clean hand".

6. Having perused the material on record, it appears to this Court that the defendant has purchased the suit shop from the real owners of the said shop and entry of his name to that effect is also made in the revenue records of the suit shop. Now, looking to the agreement pursis produced vide mark-4/4 by the plaintiff, it is crystal clear that the agreement was made between Mr. Navnitlal Chandulal Desai and Mr. Tulsidas Lilachand Patel on dt. 18/03/1997. Now, looking to the property card produced by defendant vide mark-19/3, the entry no. 5359 was made on dt. 20/03/2021 introducing Navnitlal's name in the revenue record as the heir of Chandulal Dosabhai, and on the same date, another entry no. 5960 was also made introducing the other heirs of Navnitlal Chandulal as the owners of the properties including the suit shop which means, on the day of agreement, i.e., dt. 18/03/1997, Mr. Navnitlal Chandulal was not only sole heir of suit shop. There were other heirs too for the shop. Thus, only Mr. Navnitlal Chandulal was incapable for making any agreement regarding his coparcener property. Again, if we look into the agreement, the agreement was made in favour of Mr. Tulsidas Lilachand Patel, and according to the plaintiff, he was his grandfather. But if we read the caption for the defendant in the agreement, it is made in the name of Tulsidas Lilachand Patel, the partner and admin of the Patel Mafatlal Parsottamdas

Company. Now, it is the case of the plaintiff that Mr. Tulsidas was his grandfather. But, if we read the name of plaintiff, his father's name is Mafatlal, and the company was in the name of Mafatlal Parsottamdas Patel, which means the plaintiff's grand father's name must be Parsottamdas and not Tulsidas. This difference can be wiped out by studying the genealogy of the plaintiff, but the plaintiff did not produced his genealogy and thus, there raises a doubt in the case of the plaintiff. Again, the plaintiff did not produce any recent receipts of the rent paid by him. He only produced two receipts of the year 2017 and 2019, which are also made in the name of Patel Tulsidas Lilachandbhai and not in his name. He averred that the municipal taxes of the said shop has been paid by him, and to support his statement, he produced the receipt of the municipal taxes in which the occupier's name has been described as Patel Tulsidas Lilachand, but he did not declare that whether the electricity bill is paid by him or not. He also did not declare when his grand father died. The plaintiff did not join the owners too from whom his grand father got the tanented rights. Thus, the plaintiff could not prove that he is the heir of Patel Tulsidas Lilachand. The plaintiff has filed the applications seeking temporary injunction and mandatory injunction only on the ground that he is

in the possession of the suit shop, and the defendant is to be restrained to interrupt his possession over the suit shop. But, perusing the agreement pursis and the revenue records too brought on record by both the Ld. Advocates (which are also admitted by the Ld. Advocate Mr.Prajapati for the plaintiff), it cannot be made crystal clear that the plaintiff is having the tenanted rights over the suit shop as he did not produce any receipts after the year 2019. And this Court also noticed that any genealogy is not brought to the record by the plaintiff, thus, he does not come with clean hands and the person doesn't do equity cannot be entitled to grant equity.

7. So, in view of aforesaid reasons, it transpires to this court that the plaintiff has failed to establish his legal possession over the suit shop. And it is well settled law of temporary injunction that if one is failed to establish his prima facie case, no temporary injunction can be granted in his favour even if the balance of convenience and the aspect of irreparable injury is in his favour. In view of the findings of this Court, unless the plaintiff proves his legal possession over the suit shop, no interference can be called for by granting such temporary injunction. The plaintiffs' claim for being in possession however succeeded, he failed to

prover his legal possession over the shop. Thus, no temporary as well as mandatory injunction could be granted in his favour. So, this court firmly opines that the plaintiff is entitled neither to equitable remedy of temporary injunction nor to have mandatory orders in his favour as he miserably failed to prove his legal possession over the suit shop.

8. So, in view of the aforesaid discussion and reasons, it is crystal clear that the plaintiff has miserably failed to establish *prima facie* case in his favour against defendant. This court declines to invoke equitable jurisdiction of granting temporary injunction and mandatory injunction in favour of the plaintiff against defendant. Hence, the following order has been passed in the huge interest of justice:

-:: ORDER ::-

1.The applications for temporary and mandatory injunctions filed by the plaintiff vide ex.5 and ex.15 as well are hereby rejected.

2.No order as to cost is made.

Pronounced in the open court on January 8, 2024.

Place: Vadnagar

Date : 08/01/2024

**(Alpa Prabhudas Kadiwar)
Principal Civil Judge,
Vadnagar.**

(Judge Code : GJ-01554)