



IN THE COURT OF 2nd ADDITIONAL SENIOR CIVIL JUDGE AT

MORBI.

REGULAR CIVIL SUIT NO.85 OF 2021

ORDER BELOW EXHIBIT-05

1. Read the application & documents produced on record. Heard Ld. Advocate for plaintiff Mr.P.H.Vala. For defendant nos.4 & 5 Ld. Advocate Mr.M.K.Parekh carried out arguments.
2. Present application is filed by plaintiff seeking order of this Court under Order.39 Rule.1 & 2 of Civil Procedure Code (Herein after referred as C.P.C. for brevity). The property in question is situated in village Mota Dahisara of Taluka Maliya(Mi.) bearing revenue survey no.566, ad-measuring acre 9-34 gunthas and revenue survey no. 565, ad-measuring acre 3-24 gunthas and way of ingress and outgress to reach defendant nos.4 & 5's agricultural land.
3. By filing this application along-with suit, it is prayed by plaintiff that defendant nos.4 & 5 may be restrained from using way as ordered by Mamlatdar, and defendant nos.4 & 5 may also be restrained from opening way by using police help.
4. Notice of this application was served to defendants. Defendant no.1 did not appear before the Court.

Defendant nos. 4 & 5 filed written-statement at exhibit-21. In this written-statement it is stated that, since purchase of land by defendant nos.4 & 5 from earlier owners, they are having right of way. It is stated that as recently, plaintiffs closed that way they filed suit before Mamlatdar under section-5 of Mamlatdar Court's Act. Their plaint was acted upon and after following procedure, order was passed against plaintiffs. It is also stated that, this order was challenged by plaintiffs by filing revision before Deputy Collector. This revision was also rejected. Hence, they filed this suit before the Court. It is stated that in the sale-deed executed way back in year-1992. It is stated that in that sale-deed there is mentioning as to right of way of the defendant nos.4 & 5. As plaintiffs of the present suit closed that way, suit within limitation came to be filed by defendant nos.4 & 5 before Mamlatdar. Hence, it is stated that order passed by Mamlatdar and Deputy Collector is right and justified. Lastly, it is stated that plaintiff's suit is not bona-fide and present application may be rejected.

5. Ld.Advocate for the plaintiff Mr.P.H.Vala argued that in this case, Mamlatdar has exceeded his jurisdiction. It is also argued that limitation of six months is not followed. It is also stated that in this suit procedure carried out by Mamlatdar is not in accordance with Law. He also stated that despite of defendant nos.4 & 5 having alternative

way, wrong order is passed by Mamlatdar. It is also stated that before Mamlatdar, defendant nos.4 & 5 did not state any exact date. He stated that in written-statement there is only denial of the defendant nos.4 & 5. He referred to the following judgement to pray grant of injunction order in favour of the plaintiff.

a) Vallabhbhai Vastabhai Kukadiya Vs. Dy.Collector reported as 2022(2) G.L.H.469.

5.2. Per contra, Ld.Advocate Mr.M.K.Parekh carried arguments of this application. He stated that to have injunction order in his favour, plaintiff was supposed to prove three necessary ingredients namely, Prima-facie case, balance of convenience and irreparable loss/injury. He stated that, plaintiff failed to prove any of the ingredients. He stated that Mamaldar has given ample chance of hearing. He stated that, as plaintiffs of the present suit did not appear before Mamlatdar, order was passed by Mamlatdar. It is also stated that in sale-deed executed in year-1992, there is mentioning as to right of way of the defendant nos.4 & 5 from land of Tapu Adam & Lagha Vagha. He stated that revision filed by the plaintiffs also came to be rejected by Deputy Collector. Hence, he prayed to reject this application.

6. Having heard both sides, this Court has gone through record of the suit. Before passing any order in present application it would profitable to state herein that, general

proposition of law has been laid down by Hon'ble Supreme Court as well as Hon'ble Gujarat High Court that in order to claim prohibitory (temporary or permanent) injunction, it is necessary for the plaintiff prove prima-facie case, apart from establishing other two ingredients, namely, balance of convenience and irreparable loss/injury. It required to be noted that, The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (i) whether the applicant has a prima facie case; (ii) whether the balance of convenience is in favour of the applicant; and (iii) whether the applicant would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

7. Having above settled principles in mind, this Court has to find that whether plaintiff's prayer falls within ambit under which this Court can extend benefit of order of injunction in favour of plaintiff.

7.1. It is admitted fact on record that plaintiffs and defendant nos.4 & 5 are owner of the respective lands mention in para.1 & 2 of plaint. Dispute is all about right of way passing through revenue survey no.566 & 565's land. As plaintiffs closed way, defendant nos.4 & 5 filed suit before Mamlatdar. Same was allowed. Revision was preferred by plaintiffs before Deputy

Collector. Which was rejected. Hence, plaintiffs approached this Court.

7.2. Main grievance of the plaintiffs is that, Mamlatdar did not followed due procedure. It is also alleged that, limitation is also overlooked by Mamlatdar while passing order in the suit filed by the defendant nos.4 & 5.

8. In this suit plaintiff approached this Court seeking permanent injunction along-with declaratory reliefs. Along-with suit, present application for temporary injunction. In this suit it is admitted position that, plaintiff as well as defendants ownerships are not dispute. Only dispute is with regard to right of way as disputed by plaintiffs. Be it stated that sale-deed in favour of the defendant nos.4 & 5 are of year-1992. While sale-deed in favour of plaintiffs are of year-1996.

9. To address issue of Limitation raised by the plaintiff, reference to section-5 of Mamlatdar Courts Act would be inevitable. Same runs thus.

(3) **Suit to be filed within six months.** - No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

(4) **Cause of action.** - The cause of action shall be deemed to have arisen on the date on which the [impediment to the natural flow of surface water or the] dispossession,

deprivation or determination, of tenancy or other right occurred, or on which the[impediment], disturbance or obstruction, or the attempted [impediment or] disturbance or obstruction, first commenced.

10. Sub-section-3 of Section-5 of Mamlatdar Courts Act provides six months limitation to file the suit after casue of action arise. What is cause of action is also provided in sub-section-4 of Section-5. On conjoint reading of both these sub-sections it can be said that, as early as right of way is disturbed or restrained or closed, cause of action is said to have arise for the defendant nos.4 & 5 of the present suit to file suit before Mamlatdar. It also appears that, before passing order Mamlatdar has recorded his prima-facie satisfaction. Mamlatdar has referred copy of sale-deed, measurement-sheet, panchnama carried out by Talati-cum-Matri and Circle Officer. Thus, it can be said that order passed by Mamlatdar was passed after following due process provided in Mamlatdar Courts Act.

11. Grievance of the plaintiffs that dur procedure was not followed by Mamlatdar is somehow not tenable. Because, order of Mamlatdar clearly reflect that, plaintiffs of the present case despite of served notice did not appear before Mamlatdar. Even revision preferred by the plaintiffs of the present case also came to be rejected.

12. Judgement on which reliance is placed by the plaintiffs does not helps them. Because as discussed

earlier, Mamlatdar has recorded his satisfaction before passing order. Which was upheld by the Deputy Collector. Hence, judgement relied on plaintiff's Advocate is not helpful to plaintiffs.

13. For fore-going reasons, this Court believes that, plaintiff has failed to prove any of the ingredients namely, prima-facie case, balance of convenience and irreparable injury/loss. Thence, this Court firmly believes that, this is prefect case in which plaintiff's application as to injunction can be rejected. Hence, following order is passed.

ORDER

- 1.** Present application is hereby rejected.
- 2.** Cost of the present application will follow the final outcome of the suit.

Order signed & pronounced in open court today.

Date:04.01.2023

Morbi.

(Vikram Karsanbhai Solanki)

2nd Additional Senior Civil Judge.

Morbi.

Judge Code :- GJ01099