



IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE AT MORBI.

REGULAR CIVIL SUIT NO.96 OF 2021

ORDER BELOW EXHIBIT-05

1. Read the application & documents produced on record. Heard Ld. Advocate for plaintiff Mr.K.N.Gauswami. For defendants Ld. Advcoate Mr.P.D.Manseta has carried out hearing.
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 identified as revenue survey no.3 paiki1 Hec.Aare.Sq.Mtrs. 02-30-67 situated in Juna Nagdavas of Morbi Takula (Herein after referred as "Suit property").
3. By filing this application along-with suit, it is prayed by plaintiff that defendants may be restrained from entering into suit property and interfering with possession of plaintiff. It is also prayed that defendants may also be restrained from carrying out any construction on the suit property and if any construction is carried out same may be demolished. It is also prayed that defendants may be restrained from taking over illegal possession of the suit property from plaintiff.
4. Notice of this application was served to defendants. In pursuance of service of notice defendants appeared before the Court.

Defendants filed their written statement at exhibits-15 & 27. In these written statements it is stated that, by virtue of sale-deeds, both defendants have acquired right and interest in the suit property. Thus, defendants are legal owner of the suit property. It is also stated that sale-deed no.5468 in favour of defendant no.1 is executed on dt.18.12.2000. While sale-deed no.1101/375 is executed in favour of defendant no.2 on 12.05.1975. Thus, it is stated that since year-2000 & 1975 both defendants are in occupation and possession of the suit property. It is also stated that, in this suit earlier notice dt.15.07.2017 was issued by plaintiff and defendants have given reply of the same on 20.07.2017. Thus, it is stated that since 20.07.2017 plaintiff is having knowledge about sale-deeds executed in favour of the defendants. It is also stated that, plaintiff has not mentioned anything about why after four years of giving notice, this suit is filed. Defendants also averred that, they have not encroached upon anyone's land. It is also stated that, after obtaining permission from proper authority they have carried out construction on the suit property. Defendant no.2 also states that, since 1975 he is in possession of the suit property. Lastly, it is stated that plaintiff has stated false facts in his plaint. Hence, plaintiff's application requires to be rejected.

5. Arguing matter as to seeking injunction, Ld.Advocate for the plaintiff Mr.K.N.Gauswami submitted that, suit property is ancestral property of plaintiff. It is also submitted that, in this suit

defendants are trying to interfere with possession of the plaintiff. It is also submitted that, defendants are also trying to encroach upon plaintiff land. He also argued that in this suit defendants are illegally trying to carry out construction on the plaintiff's property. He referred to the documents produced vide mark-3/1 to 3/10. Having reference to the same he has stated that, all these documents clearly suggests that suit property is ancestral property of the plaintiff. He referred to the N.A.permission granted in favour of Ayar Ladha Abha who was predecessor of plaintiff. He referred to the revenue record to the effect that till today plaintiff's name is there in revenue record. Which suggests that, plaintiff is in possession and owner of the suit property. Having reference to the affidavits filed at exhibits-29 to 32 to say that possession is with plaintiff. Hence, he lastly prayed to allow the application as prayed for.

5.1. Per contra, Ld. Advocate Mr.P.D.Manseta mentioned that his written arguments produced at exhibit-35 may be considered as his arguments. In this arguments, he has stated that, both defendants are owner of the suit property by virtue of sale-deeds executed in year-1975 & 2000. It is also stated that, as they are owner and occupier of the suit property they are carrying out construction as per their ownership. Reference is made to the written statements filed at exhibits-15 & 27. It is specifically stated that defendants are not interfering with possession of the plaintiff's property. But, defendants are

carrying out construction in their property. It is also stated that as old hotel was in very damaged condition. Hence, defendants have only carried renovation as per earlier construction. It is also stated that before defendant no.1, his father was carrying out business of hotel and hence there is no possession of plaintiff at any point of time. It is also stated that, being owner of the suit property by registered sale-deeds, defendants can't be restrained from carrying out necessary construction in their property. With regard to affidavits filed on behalf of plaintiff vide exhibits-29 to 32, it is stated that all these persons are known to the plaintiff. Hence, to support case of plaintiff, false affidavits are filed. With regard to sale-deeds, it is stated that grandfather of plaintiff has executed sale-deed in favour of Devdanbhai Merambhai Barot. After that said property is purchased by defendant no.1 from said Devdanbhai Merambhai Barot. Thus, defendant no.1 has purchased property from person, who was legally owner and entitled to execute sale-deed. Thence, he lastly prayed to reject application.

a) He referred to the following judgements in his argument.

- **Ciba Geily Limited Vs. Sun Pharmaceuticals reported as 1992(2) G.L.R. 1053.**
- **Loucal Promotors Vs. Gautam Dudhoria reported as AIR Calcutta 2006 117.**
- **Ajay Mohan Vs. Rai reported as SCC 2008 (2) 507.**

- **Surat Municipal Corporation Vs. Rameshchandra Shantilal reported as AIR 1986 Gujarat 50.**
- **Aher Mesa Hamir Vs. Charan Shamla Sura reported as 1973 G.L.R. 812.**

6. Having heard both sides, this Court has gone through record of the suit. Before this Court pass 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.

8. Both sides produced following documents in support of their claim.

8.1. Documents produced on record by plaintiff.

Sr.No.	Discription	Mark
1	Order of N.A. in favour of Ladhabhai Abhabhai	-3/1
2	Village form No.8A	-3/2
3	Village form no.7	-3/3
4	Village form no.12	-3/4
5	Copy of entry No.332 in village form no.6	-3/5
6	Copy of entry No.1593	-3/6
7	Copy of entry No.1593	-3/7
8	Copy of entry No.1654	-3/8
9	Recent photo of suit property	-3/9
10	Photo of suit property	-3/10

8.2. Documents produced on record by defendants.

Sr.No.	Discription	Mark
1	Copy of sale-deed nos.5469 & 5029, dt.18.12.2000 & 06.04.2016	-16/1
2	Copy of sale-deed no.1101, dt.12.05.1975	-16/2
3	Notice issued by plaintiff dt.15.07.2017	-16/3
4	Cover of notice produced vide mark-16/3	-16/4
5	Reply of notice produced vide mark-16/3	-16/5
6	Identity card of defendant no.1	-16/6

9. In this suit plaintiff is claiming that, on his property defendants are encroaching and they are trying to dispossess plaintiff from

suit property. It is required to be noted that, on other hand defendants are claiming their right, interest and share by virtue of sale-deeds. Sale-deeds are produced vide mark-16/1 & 16/2. These sale-deeds are not denied by plaintiff till today. Plaintiff has not stated anywhere that, said sale-deeds are bogus, forged or fabricated. Even in exhibit-28's counter affidavit, there is no challenge to the said sale-deeds. In this suit plaintiff is claiming that, defendants are encroaching upon his property. Going through whole plaint and all documents, it is not clear on which part and on which side of plaintiff's property. Plaintiff only stated that defendants has nothing to do with suit property.

10. Plaintiff in his plaint in sub para of para.1 on page mentioned that, defendant are trying to encroach upon property of the plaintiff. Plaintiff just baldly stated that, illegal construction is being carried out by defendants in his property. But, **on which side and how much illegal construction or encroachment is carried out defendants is not specifically stated by plaintiff.** To this effect this Court can recall herein judgement of Hon'ble Bombay High Court delivered in case of **Laxman Vamanrao Nagapure Vs. Shankar Haribhau delivered in second appeal No.123 of 2013.** In this judgement Hon'ble Bombay High Court in para.14 has specifically held that “when the suit is filed for removal of encroachment from and for the possession immovable property, the plaintiff is required to take care to comply with Order VII Rule 3 of the Code of Civil

Procedure so as to describe the suit property which is subjectmatter of the suit sufficiently so as to identify appropriately with boundaries thereof. The plaintiff must be careful to describe the property by its boundaries, Survey Number/Gat Number with area mentioning the boundaries on North, East, West and South of the suit property. **Without such description, the trial Court may not be assisted properly by the plaintiff to pass an effective decree if it is passed for the removal of encroachment from the suit land/property in such cases.”**

11. Be it stated that in year-2017, plaintiff also issued notice to the defendants. Same is produced vide mark-16/3 by defendants. It is matter of surprise that despite such notice being issued by plaintiff, plaintiff did not produce such notice. Why such notice was not produced by the plaintiff?. This question is answered. Even other-wise, in this suit plaintiff is claiming right, interest in the suit property. On other hand defendants have specifically stated that, they have acquired property by way of purchasing the same, by registered sale-deeds. This issued hold great importance in deciding such injunction applications. When defendants have produced sale-deeds in their favour and it is not challenged by anyone before any authority, same is required to be taken into consideration.

12. When defendants have acquired property through registered sale-deeds, they can't be restrained from carrying out

construction on their property. Be it stated that, plaintiff only averred that, defendants are carrying out illegal construction. But, on other apart from such mere words no documents are produced by plaintiff. To put it differently, it can be said that plaintiff did not inquire with any local statutory body with regard to this construction being illegal or not. Mere words are spelled out in the plaint. It is also required to be noted that, when defendants are having sale-deeds in their favour, affidavits filed by plaintiff, with regard to suit property will lose significance. Hon'ble Supreme Court has repeatedly held that when property is purchased by registered sale-deeds, same may be given more weightage rather than revenue record. Hon'ble Supreme Court has also held that revenue record is only for fiscal purpose and it does not create or extinguishes right of any party. Thus, sale-deeds produced by defendants vide mark-16/ & 16/2 are to be given due weightage, then revenue record produced by plaintiff.

13. Another emerging fact, which requires due consideration is about delay on filing suit by plaintiff after issuance of notice dt.15.07.2017. In this notice produced vide mark-16/3 there is same fact stated by plaintiff as to encroachment and causing disturbance with possession of the plaintiff. It also emerges that defendants have given reply of this notice. In this reply defendants have specifically stated about sale-deeds executed in year-1975 & 2000. Thus, this fact also gains important place which deciding application for injunction.

14. Judgement of Hon'ble Calcutta High Court in case of **Loucal Promoters(Supra)** speaks about not producing any plan by defendant as well as plaintiff. This issue is already discussed by this Court in fore-going part of this order. Judgement of Hon'ble Gujarat high Court in case of **Aher Mesa(Supra)** has held that, when any person is in long possession of the property, injunction order can't be passed against him. Thus, this judgement helps the defendants.
15. This Court has also gone through reliefs claimed in suit as well as present application. Reliefs asked in both suit as well as present injunction application are identical. To be very precise, there is verbatim reproduction of reliefs in this application. Hon'ble Supreme Court as well as Hon'ble Gujarat High Court has repeatedly held that, interim orders which practically gives the principal relief sought in the suit, can't be granted.
16. This Court firmly believes that, plaintiffs have failed to make out prima-facie case in their favour. Even other-wise nature of the suit clearly demonstrates that, in this suit plaintiffs are seeking recovery of money. When whole suit is based upon recovery of money, how plaintiffs will suffer irreparable loss which can't be compensated by was of money is not explained at all by plaintiff's side. This also very fact can't be ignored by the Court when deciding injunction application.
17. 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:12.08.2022

(Vikram Karsanbhai Solanki)

Morbi.

2nd Additional Senior Civil Judge.

Morbi.

Judge Code :- GJ01099