

Order below exh-5

- 1.** The application under Order XXXIX Rule 1 and 2 of Civil procedure code (for short, CPC) and section 151 of CPC is filed on behalf of plaintiff against defendant. The interim relief prayed through this application is that defendant be restrained from entering or dispossessing the plaintiffs from the disputed property till the final disposal of the suit.
- 2.** The brief facts of the case are that this suit is filed for Declaration and Permanent injunction against the defendant praying that plaintiffs be declared the owner and defendants be permanently restrained from interfering and dispossessing plaintiffs from the peaceful possession of the disputed property. It is the case of the plaintiff that Late Kodi Chakubhai Dayabhai is the ancestor of plaintiffs. That under the provisions of Vada Sahinta, 1932 Morbi state has given them One acre and 12 guntha land at Mauje Chakampar for the purpose of cultivation of vegetables and since then plaintiffs are cultivating the land and in the possession of same. Ancestors of the plaintiffs have constructed houses over the land given to them in such a way which is in knowledge of all and they are also in the continuous uninterrupted peaceful possession for over so many years till date. Plaintiff has also produced Lavajam/fee receipts which were issued to Late Kodi Chakubhai Dayabhai by Morbi State

Dated. 26.07.1922, 03.07.1932, 01.07.1937, 11.06.1938, 26.07.1940, 15.07.1941 and 18.07.1942 respectively, produced herein vide mark 3/1 to 3/7. After the demise of Kodi Chakubhai Dayabhai the name of plaintiff's father, being his legal heir, Kodi Bhikhabhai Chakubhai was entered in the vada register at sr.no. 1 and 9 by Mamlatdar Morbi Taluka, produced herein vide mark 3/8. It is submitted that plaintiff has also produced all the receipts of Vighoti and lavajam which was regularly paid by their father. Further that name of plaintiffs father has also been entered in the Gaam Namuna no. 9 revenue record of Chakampar and the receipts are produced herein vide mark 3/9 to 3/19. It is submitted that 45 years ago father of plaintiffs has expired and being legal heir of the deceased present plaintiffs are using and in the possession of the Vada land as inherited by them through their father. Hence, since 100 years plaintiffs are in the continuous uninterrupted peaceful possession of the Vada land and constructed houses over it which is in the knowledge of all. That plaintiffs have constructed total 8 houses which are duly registered in Chakampar Graam Panchayat and duly signed and sealed tax receipts by Talati cum Mantari Chakampar Graam Panchayat are produced here in this suit vide mark 3/20 to 3/31. That houses of the plaintiffs comes under survey no.683 paiki (herein after as disputed property).

- 3.** It is the say of plaintiffs that they were not served any of the encroachment notices by Chakampar Gram Panchayat, Taluka Vikas Adhikari, Jila Vikas Adhikari or Mamlatdar between

year 1932 to 2017. They are the legal owner of the 8 residential houses constructed on the land by their Ancestors. Defendant is the elected sarpanch of the present term and previous sarpanch Parshotambhai Babubhai Kalariya is father-in-law of the defendant. There was a clash between plaintiff no.2 Jayantibhai Bhikhabhai Darodara and Bhavesh Babubhai Kalariya, Babubhai @ Gandubhai Kalariya, Savjibahi Gandubhai Kalariya for drawing out water from the common pond/pool on 23/08/2016 and a FIR was lodged in the Taluka Police Station Cr.No. I/133/2017 U/S 323,324,504,506(2),114 of IPC and GP Act S:135, produced vide mark3/32. That after this incident Parshotambhai Babubhai Kalariya father-in-law of present plaintiff was elected as sarpanch of the village who consequently misused his authority to harass plaintiffs out of animosity and revenge and issued them false and illegal notices to vacate the disputed property. Parshotambhai Babubhai Kalariya the then sarpanch for satisfying his malafide intentions issued various notices to them by giving false reasons, produced vide mark 3/33 to 3/37. Notice dated 27/12/2018 and 17/01/2019 was duly replied by Keshubhai Bhikhabhai Darodara, produced vide mark 3/38. That on 03/07/2021 Parshotambhai Babubhai Kalariya, Sarpanch and one unknown person came to the disputed property and attacked and injured Jayantibbhai Bhikhabhai Darodara with weapons after which he lodged an FIR in Taluka Police Station Cr.No. I/ 1198/2021 U/S 323,504,506(2), 114 of IPC and GP Act S:135, produced vide mark3/39.

4. Thereafter this FIR ex-sarpanch Parshotambhai Babubhai Kalariya approached hon'ble High Court of Gujarat and filed SCA 18794/2021 against plaintiffs and others and prayed for the removal of illegal encroachment within a period of 7days wherein hon'ble High Court of Gujarat was pleased to pass an order directing the police authorities to grant assistance to the panchayat and panchayat shall carry out appropriate implementation or perform its statutory duties, in a reasonable manner, in accordance with the law, produced vide mark 3/40 to 3/42. That after the order passed by the hon'ble High Court of Gujarat defendant has wrongly and falsely misinterpreted the order and has served plaintiffs final and last notice dtd 12/10/2022 to vacate the disputed property by 20/10/2022 and other notice dtd 29/12/22 under section 105 of Gujarat Panchayat Act, 1993 to vacate the disputed property by 05/01/2023 failing to which Gram Panchayat shall demolish the residential houses constructed over it. Plaintiffs have duly replied the notice through their Advocate dtd 15/10/2022. That defendant is forcefully and illegally trying to dispossess plaintiffs from the land of their ownership which is in their possession since 100 years. Defendant has bad intentions to harass and dispossess plaintiffs by misusing his authority to take revenge from them. Hence, it is prayed that interim prayer sought by the plaintiff be allowed and status quo be maintained till the disposal of the suit.

5. Defendant has appeared in the suit and filed his reply vide exh-11. Most of the averments made by plaintiff have been

specifically denied by defendant and submitted through his written statement that disputed property is a Government Land which comes under Chakampar Gaam survey no 683/1 and 571 paiki 1 of Morbi Taluka and is a Gauchar Land. Plaintiff is constructing residential houses over the Gauchar land. That defendant has served them notice under section 105 of Gujarat Panchayat Act,1993. Defendant has also moved to the hon'ble High Court of Gujarat and filed SCA 18794/2021 against plaintiffs wherein dtd 26/09/2022 they are entitled to remove the encroachment within 7 days of the order. Defendant has denied that plaintiffs have received any vada land by Morbi state. Moreover plaintiffs have themselves admitted the fact that they have constructed residential houses on the vada land which is itself not legal and as per rules. Further that even if plaintiffs have received vada land for the purpose of cultivation as the case may be plaintiffs have not regularized it for future purposes which prove that plaintiffs are not the owner of the disputed property. Plaintiffs have encroached the Government Gauchar Land which does not belong to them. Plaintiffs have no right to construct houses on the Govt. Land. That defendant is legally entitle to give notice and take lawful action against plaintiffs. Defendant does not have any ill will or malicious intentions against the plaintiffs and they are acting in a lawful manner. Further that defendant is acting on the instructions issued to them vide letter dtd 6/10/2022 of Taluka Development officer in the light of order passed by the Hon'ble High Court of Gujarat. That plaintiffs have also

not joined the proper parties to the suit and therefore their suit is liable to be rejected and no interim prayer can be granted in the favour of plaintiffs.

6. Before deciding this application it is pertinent to mention at this stage that plaintiff has preferred another application vide exh-15 to join TDO as a necessary party to the suit and on 5/01/2023 proposed party (TDO) has also filed his reply vide exh-22, both the parties have been heard and the application has been kept for order. Vide separate order passed at exh-19 dtd 04/01/2023 the matter was kept for urgent hearing of exh-5 and considering the urgency of the matter in hand this application is decided in the presence of both the parties already on record as consented and agreed and exh-15 is decided vide separate order.

7. In support of contentions the plaintiffs have filed various documents vide Exh-3 mark 3/1 to 3/57, mark14/1 to 14/3 mark 20/1 to 20/3. Defendant has produced Exh-12 mark 12/1 to 12/16.

8. Arguments Advanced- Both the parties have argued the matter at length. I have carefully perused the case record, authorities relied by both the parties and the arguments advanced. Ld. Advocate Mr. C.D. Karia appearing on behalf of plaintiff have argued verbatim in support of his pleadings of his case. Plaintiff has also filed his written arguments vide exh- and submitted that plaintiff is not required to serve any notice U/S 80 of CPC to the sarpanch of the village as he is not the Govt. Authority. Plaintiff has also relied on section 105 of the Gujarat Panchayat Act(herein after to be referred

as 'Act') and argued that as per the provisions of Act Gram Panchayat/defendant is required to obtain prior permission of the Collector before demolishing any encroachment over the disputed property but here in this case defendant has not obtained any prior permission of the collector and this act of defendant is on the face of it is illegal and beyond its authorities or power. It is argued strongly that only after year 2016 i.e. the filing of first FIR against the family brothers (cousins) of the ex-sarpanch Parshotambhai Babubhai Kalariya who is also the father-in-law of present Sarpanch i.e. defendant in this case, they have started issuing false, illegal and malicious notices out of enmity. Ancestors of plaintiffs have never received any notices and were in long possession of the disputed property which clearly shows that defendant is doing everything out of ill will which defendant and his family members have towards plaintiff. Hence they are immediately required to be restrained from illegally dispossessing plaintiffs from the disputed land which is of their ownership. It is also strongly argued that defendant is wrongly interpreting the order passed by hon'ble High Court of Gujarat in SCA 18794/2021 in his own interest. Defendant is trying to misuse the order passed in SCA 18794/2021 and by using that order defendant is pressurizing the police agencies to harass the plaintiffs. Lastly, that plaintiff has been able to prove the prima facie case, balance of convenience in his favour and if the interim injunction is not passed in their favour they will suffer an irreparable loss which cannot be compensated in money.

9. Per contra Ld. Advocate Mr. C.P. Soriya appearing on behalf of defendant has strongly objected the application moved by plaintiff in this case and has argued the matter at length. Defendant has orally argued and emphasized on the fact that plaintiff in this suit has not produced even single documentary evidence which could prove their prima facie ownership over the disputed land or residential houses. Ld. Advocate appearing on behalf of defendant has referred all the documents produced by plaintiffs vide mark 3/1 to 3/57 and asserted that mark 3/1 to mark 3/31 are mostly lavajam receipts, tax receipts, pass issued to them by Morbi state or Gram Panchayat for the specific duration or time period as stated therein but such receipt are no proof of ownership. It is also argued that even the Bakla receipts produced vide mark 3/8 do not show any authority or time/period as to how and for how long they received the disputed land for vada purpose. Plaintiff have also not produced any receipts if the Bakla (land) was renewed in favour of them or not.

10. Further that the actual cause of action begins in this case dated 23.08.2017 where Chakampa Gram Panchayat issued a khulasa notice to them on receiving a complaint from a village resident that plaintiffs have illegally encroached the Vada land which was given to them for cultivation but they have built houses over it. Ld. Advocate for defendant has denied any malafide intention or vengeance against plaintiffs. It is also argued that plaintiff has constructed the houses on Gauchar land which do not belong to plaintiff and they do not have any right of

ownership over it. Moreover if the Vada land was given to them for specific purpose has been misused and plaintiffs have encroached the Gauchar Land by constructing. The land has not been regularized as per the provisions and rules of the Vada Sahinta and without obtaining any prior permission of the appropriate authority plaintiff have constructed residential house on the disputed land. Defendants advocate relied and laid stress upon revenue record Gaam Namuna Number 7, 12 vide mark 12/3 to 12/8 which shows survey no.683 paiki 1, paiki 2, paiki 3 is Govt land and survey no.683 paiki 3 is clearly specified as Gochar Land therefore defendants are legally authorized to take away or demolish any illegal encroachment as done by plaintiffs in the present case. Further defendant relied upon the order passed by Hon'ble High Court under which they sought police protection, produced vide 8/1—8/2. The advocate also pressed on the point that whatever they are doing is under the provision of Gram Panchayat Act hence it is lawful. Defendant has also relied on judgments passed by hon'ble High court of Gujarat, Mohan v. Development SCA/12030/2009 and Fulbhai V. Sate SCA/7166/2010 and argued that defendant is lawfully authorized to take necessary action over the encroachment done by the plaintiffs and accordingly defendant prayed that present application exh-5 is devoid of merits and should be rejected.

11. For deciding the said dispute at the interim stage it is hereby required to restrict the matter to the three issues only. It is a settled law that a party is entitled

to an order of injunction only if he is able to satisfy the court that a strong prima facie case has been made out in his favour, the balance of convenience also lies in his favour and that refusal of injunction will cause an irreparable injury to him. Further, it is a settled law that grant of temporary injunction is an equitable relief wherein the party has to satisfy the court that he has acted bonafidely.

12. As all the issues are interrelated so for the sake of brevity I hereby decide them conjointly.

13. To prove his case prima facie plaintiff has mainly relied upon the factual matrix and the documents produced. It is submitted by plaintiff that disputed properties are ancestral properties and to prove the same he has relied upon mark 3/1 to 3/57. After considering the receipts produced in this case by plaintiff prima facie shows that they are using the disputed land for Vada purpose and not otherwise. Various Pavtis produced by plaintiff in the case by any way cannot be believed to be a prima facie proof of ownership of plaintiffs over the constructed residential houses or on disputed land. Here in this case it is pertinent to mention that plaintiff has received 1st Khulasa notice on 28-03-2017 and demolition notice on 11/03/2019 but they have only preferred to file this suit only after the order passed by Hon'ble Gujarat High Court in SCA 18794/2021.

14. Plaintiff at this stage could not even explain or clarify as to why till date they did not prefer to approach any appropriate forum or court of law for his civil rights specially

when their right was threatened again and again, if any. The FIR lodged and family relation between present sarpanch and Parshotambhai Babubhai Kalariya has not been denied by defendant but solely this fact does not make the case of plaintiff strong. Plaintiff in the case on hand is required to prima facie prove his legal possession, ownership and his willingness to avail his right when it was threatened first. Plaintiff has only preferred to file this suit after a gap of almost 5 years of service of first notice to them by Chakampar Gram Panchayat. Moreover plaintiffs have even failed to show as to if they have ever challenged those notices before appropriate forum being illegal or not? Defendant being a statutory body has served many notices to plaintiff and has also sought police protection for the implementation as in the light of SCA 18794/2021.

15. Plaintiff has also relied upon Bai Chanchal d/o Patel Ranchodbhai Jhaverbhai v. Motibhai Jhaverbhai (decd) through his legal heirs Budhabhai Motibhai Patel, 1986 GLH 168 and argued that he also become owner by way of adverse possession. Abiding the ratio laid down in this case in my humble opinion the aforementioned judgment is not helpful to plaintiff as the original case put up plaintiff is not that of adverse possession. Plaintiff has no pleading of ownership by way of adverse possession as orally argued at this stage. Hence in the absence of such plea or facts in pleading, such oral arguments are not tenable. Plaintiff also has stressed on the fact that they are in the possession of the disputed land for 100 years and dispossessing them is

arbitrary, illegal and contrary to law but considering the pleadings and documents produced by plaintiff he has failed to prove prima facie lawful ownership over the disputed land and houses constructed on it. In present circumstances it cannot be believed that plaintiff has prima facie proved this case in his favour. Being in possession of Vada land does not Ipso facto proves that possession of plaintiff is legal and as per the provisions of vada Sahinta. Revenue Record produced by defendant at this stage cannot be ignored in which survey no.683 paiki 3 is clearly specified as Gochar Land and survey no.683 paiki 1, paiki 2 is also shown as govt land in possession of gram panchayat. When Plaintiff has failed to show prima facie case in their favour the question of Balance of convinence and irrepaprabable injury also remains unproved. With all the observations made above this application is liable to be dismissed.

16. In view of the above discussion I am convinced to pass the following order. Nothing stated herein shall tantamount to an expression of opinion on the merits of the case.

ORDER

1. The application is rejected.
2. No order as to costs.

Order is pronounced today on 7th January, 2023

Place:Morbi

Ms. Chunauty

Date: 07/01/2023

2nd Add. Civil Judge & J.M.F.C

GJ01401