

Order below Exh.5 in Regular Civil Suit No. 31 of 2014:-

1. By filing this suit, the plaintiff has prayed as under :-

(૧૭) સબબ દાદ માંગવાની કે,

(એ) દાવા અરજી પારા-૬(એ)માં જણાવેલ માપ, વર્ણન, ચતુઃદિશા અને સર્વે નંબર વાળી અને નામવાળી પિયત જમીન અમો વાદીના દાદા સંઘાભાઈ રવજીભાઈએ તા.૧૪-૫-૬૩ના રોજ રજી. દસ્તાવેજથી ખરીદ કરેલ હોય અને ત્યારબાદ આ જમીન તેઓના ભયુભાગમાં અમારા પિતા જેરામભાઈ રવજીભાઈના ભાગમાં આવેલ હોય અને અમારા પિતાએ મૌખિક ઘરમેળ પોતાના દિકરાઓની વહેંચણ કરતા આ પિયત વાડી અમો વાદીના ભાગમાં આવેલ હોય એ રીતે અમો વાદી એકલા જ આ જમીનના કાયદેસરના માલીક હોય તેવું વિજ્ઞાપનનું હુકમનામું અમો વાદીના લાભમાં અને પ્રતિવાદીની વિરુદ્ધમાં કરી આપવા અરજ છે.

(બી) દાવા અરજી પારા-૬ના સબ પારા(એ)માં જણાવેલ માપ, વર્ણન, ચતુઃદિશા તથા સર્વે નંબર તથા નામવાળી પિયત જમીન માલીક દરજજે અમારા કબજા ભોગવટામાં હોય આ કામના પ્રતિવાદી જાતે કે તેઓના નોકર, એજન્ટ, દાડીયા કે મુખત્યાર મારફત અમારા કાયદેસરના કબજા ભોગવટામાં કોઈપણ પ્રકારની ડબલગીરી કરે નહિં કે કરાવે નહિં તેવો અમો વાદીના લાભમાં અને પ્રતિવાદીની વિરુદ્ધમાં કાયમી મનાઈ હુકમ આપવા અરજ છે.

(સી) તેમજ આ કામના પ્રતિવાદીએ રેવન્યુ રેકર્ડ સાથે કોલ્યુઝન કરીને ખોટી નોંધ નં. ૩૧૩૯, ૫૮૪૦, ૬૬૭૩ પડાવેલ છે, જે ત્રણેય નોંધો નલ અને વોઈડ છે અને અમો વાદીને બંધનકર્તા નથી તેવું ઠરાવી આપવા અરજ છે, તેમજ તે ખોટી નોંધો ના આધારે એટલે કે રેવન્યુ રેકર્ડના આધારે આ કામના પ્રતિવાદી સદરહુ દાવા અરજીના પારા-૬(એ)માં જણાવેલ અમારી પિયત વાળી તથા માપ, વર્ણન અને ચતુઃદિશા, સર્વે નંબર અને હાલ ચરાડવાના ધાવાના નામથી ઓળખાય છે તે વાડી કોઈને વેચાણ, ગીરો, બક્ષીસ કે અન્ય કોઈપણ રીતે ટ્રાન્સફર કરે નહિં કે કરાવે નહિં કે આ જમીન ઉપર કોઈપણ પ્રકારનું સરકારી કે અર્ધ સરકારી દેવું કરે નહિં કે કરાવે નહિં તેવો અમો વાદીના લાભમાં અને પ્રતિવાદીની વિરુદ્ધમાં હુકમ ફરમાવવા અરજ છે.

(ડી) તેમજ આ દાવાનું તમામ ખર્ચ પ્રતિવાદીઓ પાસેથી અપાવવા અરજ છે.

Alongwith the suit, present application is filed by the plaintiff, wherein it has been prayed as under :-

(૧૫) સબબ દાદ માંગવાની કે,

- (એ) અરજી પારા-૬ના સબ પારા(એ)માં જણાવેલ માપ, વર્ણન, ચતુઃદિશા તથા સર્વે નંબર તથા નામવાળી પિયત જમીન માલિક દરજજે અમારા કબજા ભોગવટામાં હોય આ કામના પ્રતિવાદી જાતે કે તેઓના નોકર, એજન્ટ, દાડીયા કે મુખત્યાર મારફત અમારા કાયદેસરના કબજા ભોગવટામાં કોઈપણ પ્રકારની ડખલગીરી કરે નહિં કે કરાવે નહિં તેવો અમો વાદીના લાભમાં અને પ્રતિવાદીની વિરુદ્ધમાં દાવાનો આખરી નીકાલ ન આવે ત્યાં સુધી મનાઈ હુકમ આપવા અરજ છે.
- (બી) ખોટી નોંધો ના આધારે એટલે કે રેવન્યુ રેકર્ડના આધારે આ કામના પ્રતિવાદી સદરહુ દાવા અરજીના પારા-૬(એ)માં જણાવેલ અમારી પિયત વાળી તથા માપ, વર્ણન અને ચતુઃદિશા, સર્વે નંબર અને હાલ ચરાડવાના ધાવાના નામથી ઓળખાય છે તે વાડી કોઈને વેચાણ, ગીરો, બક્ષીસ કે અન્ય કોઈપણ રીતે ટ્રાન્સફર કરે નહિં કે કરાવે નહિં કે આ જમીન ઉપર કોઈપણ પ્રકારનું સરકારી કે અર્ધ સરકારી દેવું કરે નહિં કે કરાવે નહિં તેવો અમો વાદીના લાભમાં અને પ્રતિવાદીની વિરુદ્ધમાં દાવાનો આખરી નીકાલ ન આવે ત્યાં સુધી હંગામી મનાઈ હુકમ ફરમાવવા અરજ છે.
- (સી) તેમજ આ અરજીનું તમામ ખર્ચ પ્રતિવાદીઓ પાસેથી અપાવવા અરજ છે.

2. Upon filing of this application alongwith the suit, an order to issue urgent show cause notice was ordered to be issued upon the defendant. The defendant appeared through his ld. adv. Mr. J.B. Jani and filed his written statement contesting the suit as well as this application vide Exh. 16, wherein he has specifically denied each and every allegations made by the plaintiff in the suit. It is submitted by the defendant that at the relevant time, the survey number of the land was given and so, it is untrue that no survey number was given. The defendant has also disputed that name of the land was changed. According to the defendant, the suit is filed for snatching away his land. Thus, for the reasons stated and the defence advanced in the written statement, the defendant has prayed to dismiss the suit and the application with costs.

3. Heard Ld. advs. Mr. V.H. Bhatt for the plaintiff, and the ld. adv. Mr. J.B. Jani for the defendant and also taken into considerations the documents produced by the plaintiff with the Lists, Exh.3. The defendant has not produced any documentary evidence. I have taken into consideration the panchnama prepared by the court commissioner.
4. Having heard the Ld. advs. for both the parties and considering the pleadings of the parties and the documents produced on record, following points arise for my determination to decide this application on merits.

POINTS

1. Whether the plaintiff proves that there is a prima facie case in his favour ?
2. Whether the plaintiff proves that balance of convenience lies in his favour ?
3. Whether the plaintiff would suffer the irreparable injuries which cannot be compensated in terms of money if the relief of injunction as prayed is not granted in his favour ?
4. What order and relief ?
5. My answers to the above points are as under for the reasons that follow :

Point No.1 : In the negative.

Point No.2 : In the negative.

Point No.3 : In the negative.

Point No.4 : As per final order.

REASONS

Points No. 1 to 4 :-

6. As all the points are interconnected with each others, with a view to avoid repetition of discussion of facts, all the points are discussed and decided together.

7. The issuance of injunction is governed by virtue of provision of Order 39, Rule-1 of Code of Civil Procedure. It is in respect of granting of temporary injunction. When there is a question of preservation of the disputed property and or protection for disposition thereof, Rule 2 of Order 39 of Code of Civil Procedure, lays down a procedure for issuance of injunction for restraining breach of contract or other injury of any kind. Moreover, the provisions of Rule 1 & 2 of Order 39 lays down the circumstances under which a temporary injunction can be granted and unless these circumstances exists, the Court has no jurisdiction to grant it, but, the fact that these circumstances exists does not compel the Court to grant it in all cases in as much as the Rule only shows that in the cases mentioned therein, the Court may grant an injunction. Thus, the grant of an injunction under the Rule is purely within the discretion of the Court and the grant of injunction is a very serious matter and the Court should take a good care to grant an injunction in cases only where such an injunction is essential. It being an equitable relief, it would be refused to the person who himself has failed to do equity. The principles

which govern the exercise of discretion are to affect firstly, there is a serious question to be tried in the suit and that on the facts before the Court, there is probability of applicants being entitled to the relief asked for by him. Secondly, the Court's interference is necessary to protect him from that species of injury, which the Court calls irreparable before his legal right can be established on trial and thirdly, that the comparative mischief or inconvenience which is likely to issue from withholding the injunction, will be greater than that which is likely to arise from granting it. The first of the above conditions, is what is generally termed as a prima facie case. In other words, prima facie existence of right and its infringement but, the existence of a prima facie case is not by itself, sufficient. The applicant should further satisfy the second condition by showing that irreparable injury will occur to him. If the injunction is not granted and that there is no other remedy open to him by which he can protect him from the consequences or apprehended injury. The term 'irreparable injury' only means that the injury must be material one, which can not be adequately be compensated for damages. The third condition is balance of convenience. The Court should compare amount of substantial mischief likely to be done to the applicant, if the injunction is refused and also compare it with, that which is likely to be caused to the other side of if the injunction is granted. To grant or to refuse temporary injunction, is within the jurisdiction of the Trial Court. To

grant or to refuse temporary injunction is discretionary order but, the discretion must be used in a judicious manner. The Trial Court can not use its discretionary power arbitrarily, capriciously or perversely.

8. I have heard Ld. Advocate Mr. V.H. Bhatt for the plaintiff. Ld. Advocate for the plaintiff has argued that plaintiff the grandfather of the plaintiff, Sanghabhai had purchased the suit land vide registered sale deed, a copy whereof is produced at Mark 3/1 on 14/5/63 and 28 bighas of land is out of the suit land. Ld. Adv. has further argued that the said land was purchased by grandfather of the plaintiff from the father of present defendant and since the time of purchase, the present land is in their possession, and, presently the possessed is held as pleaded in the plaint, and, therefore, the possession of the plaintiff be protected, and, temporary injunction as prayed by the plaintiff may kindly be granted by allowing this application.
9. On the other hand, ld. adv. Mr. J.B. Jani for the defendant has contested this application and has submitted that the suit is barred by necessary parties; the suit land is ancestral land of Punabhai; the suit land has come in share of the defendant; there is a undivided share of children of the defendant, who are not impleaded in the present suit; the deed is for 28 bighas of land, whereas prayer is sought for 40 bighas of land; that the name of defendant is running in the

revenue record and the same is not challenged; that there is no prima facie case in favour of the plaintiff; balance of convenience also does not lie in its favour and there would be no damage to the plaintiff which cannot be compensated in terms of money if the injunction as prayed for is not granted in its favour, and, therefore, this application may kindly be rejected on merits.

11. I have perused the record and proceedings and considering the submissions advanced at hearing of this application and upon consideration of the pleadings of parties together with the documents produced on record, it appears from a copy of Mark 3/1 that it is a copy of writing, whereby one Sangha Ravji purchased 40 bighas of land from Puna Nanji and Mohan Magan and Jemu Vala and Dalu Dansang and Tapu Dungar and Narsibhai and Ghanchi Oghadbhai. As stated in the said deed, the land was known as "Sushavava na Dhaba" and it was not given survey number. There is no authenticated official document produced on record on behalf of the plaintiff to show that the name of said land was changed from "Sushvav na dhaba" to "Charadava na dhaba" which is what the plaintiff has pleaded in his plaint. In the village form no.7/12, the land has has been described as "Charadava na dhaba". As submitted by the ld. adv. for the plaintiff, at the relevant time, survey number of the suit lands was not given, to which the ld. adv. for the defendant has opposed by submitting that a copy of mutation entry no.146 produced at Mark 3/1 was certified on 3/12/59 and this fact is also mentioned in the

pleading of the plaintiff on page no.6, para-9 in which also survey number is stated to be 496/paiki, whereas document, mark 3/1 is executed in the year 1963. There is a force in the argument advance by the ld. adv. for the defendant. Moreover, the measurement of land as shown in the village form no.7/12, Mark 3/7 and village form no.8A, Mark 3/8 is Hct. 2-08-42 per Are,, which according to the plaintiff, as pleaded in para-4 on page-2 of the suit, is as per the new measurement and old measurement was 28 bighas of land. The difference is a huge. Measurements are much different. There is nothing produced by the plaintiff that After demise of Sanghabhai, as pleaded by the plaintiff, others surviving heirs have relinquished their share in favour of right, and, there is nothing on record to support the pleading of the plaintiff regarding oral partition taken place as pleaded in the party. Admittedly, the suit land is running in the name of present defendant. Ld. adv. for the defendant submits that the suit land belongs to the defendant and it is his ancestral land, and the said land being ancestral land, there is a undivided share of children of the defendant, and they have not been impleaded in the present suit. A copy of electricity bill, Mark 3/9 together with village form no.8A, Mark 3/10 and electricity bill receipt Mark 3/10 does not show that it pertains to the electricity connection is placed/installed in the suit land as pleaded by the plaintiff. Under the circumstances, in my humble view, the plaintiff may not be said to have proved its prima facie case. From the documents produced on record, the

plaintiff does not appear to have been in possession of the suit land as pleaded in the suit, and, therefore, in my humble view, he is not going to suffer any irreparable loss if the temporary injunction as prayed in this application is not granted in his favour, which cannot be compensated in terms of money. Since, he is not found, prima facily, in possession of the suit land, and as such balance of convenience is also not found to be in favour of the plaintiff. Hence, in my humble view, all the three ingredients are not in favour of the plaintiff to get the temporary injunction as prayed, and, therefore, the prayer made in this application cannot be granted to the plaintiff.

12. Now, before parting, let's discuss the following citations relied upon by the ld. adv. for the plaintiff in favour of his submissions.

(1) Patel Jividas Trikamdas & Ors. Vs. District Collector, Mehsana, reported in 1996(2) GLR 688, wherein it has been held by the Hon'ble High Court, that "It is settled proposition of law that any action, transaction, decision or order which illegal and void *ab initio* is to be treated as non-est. The validity of such an illegal, non-est order could be question in any proceedings at any stage. The very nature of the *non-est* order in its effect does not create any right, title or interest. In the present case, there is no such issue involved, and, therefore, the facts of the case before the Hon'ble High Court and the present case on

hand being altogether different, the ratio laid down by the Hon'ble High Court is not helpful to the plaintiff.

- (2) Karthiyayani Amma, appellant Vs. Govindan, respondent, AIR 1980 Kerala, 224.

In para-7, Hon'ble High Court has held that "The ultimate position, therefore, reduces itself to this : Can a person in possession without title sustain a suit for injunction against the rightful owner if he proves possession? Yes. In this case, plaintiff is found to be in possession. On the finding, he should be granted the injunction prayed for.". Here, in the present case, as discussed in foregoing paragraph, the plaintiff is not found in lawful possession of the suit land at prima facie, stage, and, therefore, the ratio laid down in the case relied upon by the plaintiff, is not helpful to him.

- (3) Khodabhai K. Mali Vs. Rasiklal B. Bhodbunja & Ors, reported in 2008 (1) GLR 913.

In this case, Hon'ble High Court has observed in Para-6 that, "It is well settled legal position that the entries in the revenue record, do not confer any title or rights." It is true that the entries in the revenue record are for the purpose of collection of revenue, and in the present case, the name of defendant is running in revenue record. But, the

plaintiff claiming in possession on the strength of ownership, must satisfy the court about his case and merely on the strength of name in the revenue record, the ownership or title cannot be decided. Hence, the same is not helpful to the plaintiff in the decision of this application.

- (4) Kureshi Hussainbhai Motibhai & Ors. Vs. Saiyed Sidar Kesharbhai & Ors, reported in 1985(1) GLR 139.

In this case before the Hon'ble High Court, it is laid down that, entry in the record of rights, such entry has only presumptive value, only the civil court can decide the rights finally, revenue authorities are duty bound to correct the entry in accordance with civil court's decision. It is true that in the present case, name of the plaintiff is not running in the revenue record, and plaintiff claims ownership of the suit land, and in such eventuality, the decision of the court as to the title is to be decided on the strength of the documents produced on record.

- (5) Manubhai Bhagabhai Patel Vs. Cheebabhai Rambhai Patel, reported in 1995(2) GLR 1369.

The facts of the said case and the facts of the present case are different and therefore, the decision would not be helpful to the plaintiff as plaintiff has prima facie

failed to satisfy the court that he is in actual possession of the suit land.

- (6) Govindji Chhabaji & Ors. Vs. Prant Officer & Ors, reported in 2004(2) GKH 487.

The facts of the said case and the facts of the present case are different and therefore, the decision would not be helpful to the plaintiff.

- (7) Ashwinkumar K. Patel, Vs. Upendra J. Patel, reported in 199(1) GLH 1052.

In the said case before the Honourable Apex Court, in a dispute over the title of property, the plaintiff was in "permission possession" as accepted by the owners and there was sufficient material on record to show prima facie case of the plaintiff, whereas in the present case, plaintiff is not found, prima facie, in possession of the suit land, and, hence, the same is not helpful to the plaintiff while deciding the present application.

- (8) Surat Municipal Corporation Vs. Rameshchandra Shantilal Parikh, reported in AIR 1986 Guj 50.

The facts of the said case and the facts of the present case are different and therefore, the decision would not be helpful to the plaintiff.

- (9) Sadhu Ram, Vs. Gram Panchayat, Pastana, reported in 1984 P&H 262.

The facts of the said case and the facts of the present case are different and therefore, the decision would not be helpful to the plaintiff as in the present case there is no question as to forcible dispossession of the plaintiff.

- (10) Sankalchand Jaychandrabhai Patel Vs. Vithalbhai Jaychandra Patel, reported in 1997(2) GLR 1041.

In this case, Hon'ble Apex Court has held that it is settled law that mutation entries are only to enable the state to collect revenues from the persons in possession and enjoyment of the property and that the right, title and interest as to the property should be established *de hors* the entries. Entries are only one of the modes of proof of the enjoyment of the property. Mutation entry do not create any title or interest therein. In the present case, as discussed hereinabove, the plaintiff is not able to satisfy, *prima facie*, his possession of the suit land and it is well settled that the revenue entries itself do not create any right in favour of the holder thereof.

13. Thus, in view of the foregoing discussion, I am of the view that it can not be said that the plaintiff would receive irreparable injury which can not be

compensated in terms of money if the prayer as sought by the plaintiff is not granted. Furthermore, the plaintiff has failed to satisfy that the Court's interference is necessary to protect it from that species of injury, which the Court calls irreparable before the legal right can be established on trial and that the comparative mischief or inconvenience which is likely to issue from withholding the injunction, will be greater than that which is likely to arise from granting it. Furthermore, the first of the three conditions required to be satisfied for obtaining the discretionary relief of equity jurisdiction is what is generally termed as a prima facie case. In other words, prima facie existence of right and its infringement but, the existence of a prima facie case is not by itself, sufficient. The applicant should further satisfy the second condition by showing that irreparable injury will occur to him. If the injunction is not granted and that there is no other remedy open to him by which he can protect him from the consequences or apprehended injury. The term 'irreparable injury' only means that the injury must be material one, which cannot adequately be compensated for damages. The third condition is balance of convenience. To grant or to refuse temporary injunction, is within the jurisdiction of the Trial Court. This court is very much aware of the fact that to grant or to refuse temporary injunction, is within the jurisdiction of the Trial Court. This court is very much aware of the fact that to grant or to refuse temporary injunction is discretionary order but, the

discretion must be used in a judicious manner. And, this court can not use its discretionary power arbitrarily, capriciously or perversely. As such in view of foregoing discussion, the plaintiff has failed to satisfy his prima facie case and he has also failed to show that balance of convenience lies more in his favour than the defendants. Moreover, in view of above discussion, the plaintiff is not going to suffer irreparable injury which can not be compensated adequately by money. Hence, I answer issue no.1 to 3 in the negative.

Point No.4 :-

14. Hence, I answer all the three points in the negative and pass following final order for point no.4.

ORDER

The application, Exh.5 is hereby rejected on merits.

No order as to costs.

Pronounced in open court, today on 29th the day of April, 2015.

Place: Halvad
Date: 29/04/2015

SD/-
[D, V. Patel]
Principal Civil Judge,
HALVAD