

Order on Application Exh 5 under Order 39, Rule 1 & 2 of the Code of Civil Procedure, 1908

This order is passed on the plaintiff's application under Order 39, Rule 1 & 2 of the Code of Civil Procedure, 1908, seeking an interim injunction against the defendants from interfering with the plaintiff's possession of the disputed land, which bears Survey No. 131/1 of 2 and is located at Kotaba , Ahwa, Dang. The plaintiff has also prayed for an order of temporary injunction restraining the defendants from creating any third-party rights over the land until the final disposal of the suit.

Plaintiff's Case:

1. The plaintiff claims that defendant No. 1 is the recorded owner of the disputed land. The plaintiff alleges that in the year 2000, defendant No. 1 approached her, stating that he was facing financial difficulties due to his old age and was unable to continue farming. Defendant No. 1 also mentioned that his daughter had been married and was residing at her in-laws' house. Given these circumstances, defendant No. 1 agreed to sell the land to the plaintiff. The plaintiff states that after negotiation, an agreement was reached, and defendant No. 1 received a sum of money in consideration for the sale of the land.

2. According to the plaintiff, from the year 2000 onwards, she took possession of the disputed land and began cultivating it. The plaintiff further states that in 2011, defendant No. 1 demanded an additional ₹1,00,000 to execute a formal sale deed. On 24/10/2011, the plaintiff alleges that she made the additional payment in the presence of two witnesses: (1) Bharatbhai Bhikhubhai Bhoys, and (2) Dineshbhai

Mangalbhai Pawar. The plaintiff asserts that defendant No. 1 provided a written consent letter acknowledging the sale, a xerox copy of which has been produced as vide mark 3/10.

3. The plaintiff claims that since taking possession of the land in 2000, she has made substantial improvements to the property. She states that she spent ₹70,000 on leveling the land to make it suitable for agriculture, and an additional ₹40,000 on erecting a wire fence to secure the boundaries of the property. The plaintiff has been regularly cultivating the land since that time, and asserts that her peaceful possession of the land has remained undisputed for over 19 years.

4. The plaintiff states that on 13/07/2015, the names of defendants No. 2 to 5, who are the legal heirs of defendant No. 1, were entered into the land records. According to the plaintiff, this was done during the lifetime of defendant No. 1 with the intent of unlawfully usurping the land. The plaintiff contends that this entry into the land records is illegal and was made without her knowledge.

5. On 02/03/2017, the plaintiff received a legal notice from the defendants through their advocate, in which the defendants claimed that defendant No. 1 had not obtained consent from defendants No. 2 to 5 for the sale of the land. The plaintiff states that she responded to the legal notice by sending a reply vide mark 3/13, wherein she reiterated her lawful possession of the land and her agreement with defendant No. 1. She also produced the consent letter to support her claim.

6. The plaintiff further states that on 04/10/2018, defendant No. 1 filed an application with the District Development Officer seeking permission to sell the disputed land to the plaintiff. To support this claim, the plaintiff produced a copy of the application as vide mark 28/1. The District Development Officer subsequently issued a letter to defendant No. 1, asking him to provide further documentary evidence

in support of his application. The plaintiff has also produced a copy of this letter, marked as vide mark 28/2.

7. The plaintiff alleges that in recent years, the defendants have begun to interfere with her possession of the land. She claims that the defendants have visited the disputed land on several occasions, creating disturbances and attempting to forcibly take control of the property. These actions have led the plaintiff to file complaints with the local police.

8. The plaintiff also applied for permission from the forest department to fell trees on the disputed land, as part of her agricultural activities. On 13/04/2018, the defendants filed an objection with the Deputy Conservator of Forests, North Dang Forest Division, further complicating the plaintiff's use of the land.

9. In light of the above facts, the plaintiff has prayed for an interim injunction under Order 39, Rule 1 & 2 of the CPC, restraining the defendants from interfering with her possession of the disputed land and from creating third-party rights over the land, until the final disposal of the suit.

Defendants' Contentions:

1. The defendants argue that the disputed land is ancestral property, and as such, defendant No. 1 had no authority to sell the land without the consent of the other legal heirs, i.e., defendants No. 2 to 5. They claim that any sale or agreement to sell made by defendant No. 1 is void, as it was done without the required legal consent from all co-owners.

2. The defendants contend that the disputed land is subject to restrictions under Section 73AA of the Gujarat Land Revenue Code, 1879. They argue that the land falls under the category of restricted land, which cannot be transferred without prior permission from the

competent authority. Therefore, any transaction involving the sale of this land without the requisite permissions is illegal and void ab initio.

3. The defendants assert that the consent letter produced by the plaintiff is fabricated and forged. They claim that defendant No. 1 never gave consent to sell the land, and the document being relied upon by the plaintiff is not legally valid or enforceable.

4. The defendants also argue that the plaintiff is not in possession of the disputed land, and that the land has remained in the possession of the defendants throughout. They claim that the plaintiff's alleged possession is unlawful, and that the improvements and expenses claimed by the plaintiff are fabricated and false.

5. The defendants further contend that the civil court does not have jurisdiction to entertain this suit, as the disputed land is restricted under Section 73AA of the Gujarat Land Revenue Code. They argue that any disputes related to such land should be dealt with by the appropriate revenue authorities, and not by the civil court. Based on these contentions, the defendants have prayed for the dismissal of the plaintiff's application for interim relief.

Court's Findings:

Upon consideration of the pleadings, arguments, and evidence submitted by both parties, the court makes the following observations:

1. Prima Facie Case:

The plaintiff has produced documentary evidence, including the consent letter (Mark 3/10), the application to the District Development Officer (Mark 28/1), and the subsequent communication from the District Development Officer (Mark 28/2), to support her claim that defendant No. 1 agreed to sell the land and that she has been in possession of the disputed land for more than 19 years. The evidence

suggests that the plaintiff has invested in the land and has been cultivating it during this period. At this stage, the plaintiff has established a prima facie case in her favor, which warrants the protection of her rights through an interim injunction.

2. Balance of Convenience:

The balance of convenience lies in favor of the plaintiff, who has demonstrated long-term possession of the disputed land and has made improvements to it. If an interim injunction is not granted, the plaintiff stands to lose possession of the land, which she has cultivated and developed over the years. On the other hand, the defendants have not shown any urgent need or harm that would arise if the injunction is granted. Therefore, the balance of convenience tilts in favor of the plaintiff.

3. Irreparable Injury:

The plaintiff has shown that she would suffer irreparable injury if the defendants are allowed to interfere with her possession or create third-party rights over the disputed land. Given the investments made by the plaintiff in leveling, fencing, and cultivating the land, losing possession would result in significant losses that cannot be adequately compensated by monetary damages. Therefore, an interim injunction is necessary to prevent such harm.

4. Jurisdiction of Civil Court:

The defendants have raised the issue of the civil court's jurisdiction, arguing that the land is restricted under Section 73AA of the Gujarat Land Revenue Code. However, at this stage, the court finds that the issue of jurisdiction will require further examination during the final hearing. For the purpose of deciding the interim injunction, the court is satisfied that the plaintiff has made out a case for interim relief.

:Order:

In light of the above findings, the plaintiff's application under Order 39, Rule 1 & 2 CPC is allowed. The defendants, their agents, or any other person acting on their behalf are hereby restrained from:

1. Interfering with the plaintiff's peaceful possession of the disputed land bearing Survey No. 1311 of 2, situated at Kotaba, Ahwa, Dang ;
2. Creating any third-party rights or alienating the disputed land in any manner, until the final disposal of the suit.

Costs shall be in the cause.

Pronounced in open court on 11th October 2024 .

Date:11/10/2024

Place : Ahwa, Dang

(S.A.Memon)

Principal Civil Judge

Judge Code No. GJ01567