

ORDER BELOW EXH - 5

IN

REGULAR CIVIL SUIT NO. 2 of 2025

(Kharpadiya Kiranbhai Gamiyabhai & Ors Vs Anilbhai Sukkarbhai Chaudhary)

- 1] With the consent of the parties the present injunction application is taken up for hearing in Vacation.

- 2] The present order is passed below injunction application at Exh 5 and only facts required to adjudicate in nutshell, are described below,

The plaintiffs are owner of land bearing Khata No. 162, Survey No. 1, situated at Village Devipada, Taluka Vaghai, District Dang. (herein after referred to as "*Suit Land*"). This suit land was allotted to late Shri Lahanubhai Somabhai Kharpadiya. The plaintiffs are the descendants of Shri Lahnubhai and their names have been mutated in the revenue records. It is the case of the plaintiffs that the defendant has illegally encroached upon their land and has constructed a food stall. Having found the encroachment, the plaintiffs had applied for measurement of their before the DLR (District Land Recorder) who conducted the panchnama and prepared a Map (see mark 3/5 dated 10.06.2024). The plaintiffs had thereafter filed an application

before the authorities under the Gujarat Land Grabbing (Prohibition) Act, 2020 (for short the Land Grabbing Act) who conducted the inquiry, recorded the statement and disposed of the application by giving a finding that the plaintiffs would seek appropriate remedy from the Civil Court. Hence, the plaintiffs have filed the present suit for removal of encroachment and the present application claiming following interim reliefs,

(૧) સદરહુ મોજે ગામ. દેવીપાડા ચતા.વઘઈ જિ.ડાંગના ખાતા નંબર-૧૬૨ સર્વે નંબર-૧ ની કુલ જમીન પૈકી પ્રતિવાદીએ સદરહુ જમીન પર કરેલ અનઅધિકૃત દબાણ કે જે હાલના કામે સરકારી માપણીની હદ માપણી શીટમાં દર્શાવ્યા મુજબ (૧) નિશાની H થી બતાવેલ જગ્યા રી-સર્વે નંબર-૧ ના અરજદારશ્રીની છે. જેમાં આ કામના પ્રતિવાદી અનિલભાઈ સુકકરભાઈ ચૌધરીએ ક્ષેત્રફળ ૦-૦૦-૩૭ હે.આરે.ચોમી દબાણ કરેલ છે. (૨) નિશાની I થી બતાવેલ જગ્યા રી-સર્વે નંબર-૧ ના અરજદારશ્રીની છે. જેમાં પ્રતિવાદી અનિલભાઈ સુકકરભાઈ ચૌધરીએ ક્ષેત્રફળ ૦-૦૦-૪૨ હે.આરે.ચોમી. દબાણ કરેલ છે. અને (૩) નિશાની J થી બતાવેલ જગ્યા રી-સર્વે નંબર-૧ ના અરજદારશ્રીની છે. જેમાં પ્રતિવાદી અનિલભાઈ સુકકરભાઈ ચૌધરીએ ક્ષેત્રફળ ૦-૦૧-૪૧ હે.આરે.ચોમી. દબાણ કરેલ છે તે જમીન તાત્કાલિક સ્વખર્ચે ખાલી કરે યા કરાવી લઈ અથવા અમો વાદીના ખર્ચે સદરહુ દબાણ વાળી જમીનમાં પ્રતિવાદીનાઓ કે હરકોઈ તેમનાં માણસો નોકરો કે એજન્ટો હસ્તે પરહસ્તે સદરહુ જમીનમાં કબજા પ્રવેશ કરે કરાવડાવે નહીં કે સદરહુ જમીનનો કબજો પ્રતિવાદીઓ હમો વાદી પાસેથી બળજબરી પુર્વક પડાવી લે કે લેવડાવે નહિ તેમજ હમો વાદીઓ સદર દાવાવાળી મિલકતમાં જાતે કે હમારા માણસો, નોકર-ચાકરો મારફત ખેતીકામ તથા અન્ય ખેતી વિષયક પ્રવૃત્તિઓ કરીએ તેમાં અડચણ, અટકાવ, અવરોધ કરે કરાવે નહિ તેવી મતલબની હમો વાદીઓનાં લાભમાં ચાલુ દાવા દરમ્યાન કામ ચલાઉ મનાઈ હુકમ અમો વાદીના તરફેણમાં અને પ્રતિવાદીઓના વિરુદ્ધ ફરમાવશોજી.

(૨) આ દાવા અરજીનો તમામ ખર્ચ પ્રતિવાદીઓ પાસેથી અપાવો.

(૩) જરૂર પડે દાવા અરજીમાં સુધારા વધારા કરવાની પરવાનગી આપો.

3] The defendant was served and has appeared through learned advocate, and has filed written statement at Exh 12 and has stated that the suit filed is misconceived, false and not maintainable. Besides that it is stated that, the defendant is having his tea stall in the name of Maruti Restaurant besides the road owned by the Road and Building Department (R & B) and not on the land owned by the plaintiffs. This restaurant is being run for the past 28 years without any interruption. The defendant has placed on record the electricity bills and the tax paid receipts paid to the Devipada Panchayat. It is further stated that the plaintiffs have encroached upon 272 sq mts of land and are running a shop of chicken centre. The defendant has further stated that there is no illegal encroachment on the plaintiffs land and that no prima facie case is made out warranting injunction and prayed to reject the injunction application.

4] The question for consideration in the application is, whether, injunction is required to be granted in favour of the plaintiffs, till the disposal of suit.

I have heard learned advocate Shri S. C. Gamit for the plaintiff. He has submitted that the defendant has encroached upon their land. To substantiate his claim he has primarily relied upon the map produced at Mark 3/5. He has further stated that the defendant has given statement before the Circle officer on 12.06.2024 stating that, the land in his possession is owned by the father of the plaintiffs. He has further stated that the defendant has encroached upon 220 Sq mts of land as noted by the DLR in the Map. Learned advocate Shri Gamit has further submitted that the plaintiffs have a strong prima facie case and balance of convenience tilts in their favour and prayed to allow the application.

Learned advocate Shri G. B. Patel for the defendant had submitted that the defendant has not encroached upon the plaintiffs land, but has constructed his food stall on the land owned by R & B department. He has placed reliance on the electricity bills and the tax paid receipts to the panchayat. He has further submitted that the defendant is earning his livelihood from the shop since last more than 28 years and has a prima facie case and irreparable loss would be caused to him if injunction is

granted in favour of the plaintiff. He has placed reliance on the following authorities

1. AIR 2008 SCC, Madali Ranganna Vs T Ramachandra
- 2] Karnataka High Court, Thimappa Basappa Doddayankannavar Vs Krishnappa Gangadharappa Naikar.
- 3] Rajasthan High Court, Jaipur Premchand Vs Manak Chand
- 4] Rajasthan High Court, Jaipur Sukkha Singh & Anr Vs Mahal Singh & Anr
- 5] Gujarat High Court Dr P. A. Shukla Vs Dhirubhai Karsanbahi Thakkar
- 6] 1995 (2) G.L. H Hajam Babu Gulam Vs Shrimati Sunderben Anandji Gala & Anr.

I have considered the pleadings and the documents annexed therewith.

Sr. No.	Points	Findings
1.	Whether prima facie case is in favour of plaintiffs ?	Yes
2.	Whether balance of convenience lies in favour of plaintiffs ?	Yes
3.	Whether the plaintiffs will suffer irreparable loss if injunction is refused ?	Yes
4.	What order	As per final order

REASONS & CONCLUSION

5] Points Nos. 1 to 3 :

All the three points are inter-connected to each other and therefore, to avoid repetition, all the issues are discussed and decided together.

6] The tripod consideration to decide an injunction application is whether the plaintiffs have a prima facie case, balance of convenience and would cause irreparable loss which cannot be compensated in money, if injunction is refused.

7] The plaintiffs are seeking interim injunction pending the suit. The primary relief in the plaint is for possession and mandatory injunction *and* interim mandatory relief is prayed pending the suit. The plaintiff is seeking injunction upon the land owned by them. However, the defendant claims the said land to be owned by the R & B department. It is the not the case of the defendant that the defendant is the owner of the land. At present the defendant is not the owner of the land. However, the plaintiff has strongly relied upon the map prepared by the DLR office which clearly states that the defendant has encroached upon the land

owned by the plaintiffs. The plaintiffs have also placed reliance upon the documents to show that they are owner of the suit land.

- 8] Learned advocate Shri S. C. Gamit for the plaintiffs has placed reliance on the judgment in *Deoraj Vs State of Maharashtra* in Appeal (Civil) No. 2084/2004. This was a case under pertaining to election of members of the committee under section 144 Y of the Maharashtra Cooperative Society Act, 1960 in which the Hon'ble Supreme Court has held as under,

Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent.

(Emphasis Supplied)

In the aforesaid case, the Hon'ble Supreme Court has held that even at the interim state final relief can be granted. However, the same would be rare depending on the facts of the case.

9] On the other hand, learned advocate Shri G. B. Patel for the defendant has placed reliance on the following authorities.

1] AIR 2008 SCC, *Madali Ranganna Vs T Ramachandra*.

In this case the Hon'ble Supreme Court has held that while considering an application for granting of injunction, the court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury and it must also take in to consideration the conduct of the parties. It further held that grant of injunction is an equitable relief and a person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. Shri G. B. Patel has vehemently placed reliance on the point that the plaintiffs were having knowledge that the defendant is conducting his business of food stall on the land for past many years and thus they are not entitled for temporary injunction.

2] *Thimappa Basappa Doddayankannavar Vs Krishnappa Gangadharappa Naikar* reported in AIR 2001 KANT 57. (Hon'ble Karnataka High Court)

In this case the Hon'ble High Court of Karnataka has observed that for prima facie case really means that there is a case which requires trial and that the case is not the one based on erroneous and vexatious grounds. It further held that the court should not record a decision on merit while deciding an interim application.

3] *Jaipur Premchand Vs Manak Chand* reported in AIR 1997 RAJ 198 (Hon'ble Rajasthan High Court)

This was a case before the Hon'ble High Court in a revision for a question whether interference by the Hon'ble High Court u/s 115 of C.P.C was justified when there is a concurrent finding of fact of the courts below in which the Hon'ble High Court has held that, the order exercising the discretion can be interfered only if the same is perverse or having been passed on some extraneous consideration.

4] *Jaipur Sukkha Singh & Anr Vs Mahal Singh & Anr* reported in AIR 2003 RAJ 21 (Hon'ble Rajasthan High Court)

This was a case in which, the parties were having agreement to sell. However, in the case on hand the defendant is alleged to be in possession without any conveyance. Hence, with due respect the facts of the case are different and thus not helpful to the defendant.

5] *Dr P. A. Shukla Vs Dhirubhai Karsanbahi Thakkar* reported in 2022 GLH 22 326 (Hon'ble Gujarat High Court)

This was a case in which the interpretation of Order 39 Rule 4 of C.P.C was in question. This is not the case on hand. Hence, with due respect the facts of the case are different and thus not helpful to the defendant.

6] 1995 (2) G.L. H, *Hajam Babu Gulam Vs Shrimati Sunderben Anandji Gala & Anr.* (Hon'ble Gujarat High Court)

The judgment cited by the defendant is incomplete copy, hence the same is not taken in to consideration.

10] I have considered both the rival submission of the party. In the present case the plaintiff is seeking interim mandatory injunction pending the suit. Therefore, It would be apposite to cite the judgment of Hon'ble Delhi High Court in *Mrs. Sukerma Rani*

Kapoor 2002 IIAD Delhi 860. In this case the Hon'ble Delhi High Court has held that, there is no dispute about the general position of law namely, such a mandatory injunction at interlocutory stage should not normally be granted which has the effect of granting the final relief. However, it is not an absolute principle of law. There is no such mandate by any law that in all circumstances such a relief at an interlocutory stage had to be refused. Of course, normally such a relief is not to be granted. However, in exceptional circumstances mandatory injunction at interlocutory stage, particularly to restore the status quo ante, can be granted by the Courts. When the plaintiff has a strong case for trial, that it shall be of high standard than a prima-facie case i.e. normally required for a prohibitory injunction, when it is necessary to prevent irreparable or serious injury which normally cannot compensated in terms of money, when the balance of convenience is lies in favour of one seeking such relief, the temporary mandatory injunction can be granted. In the present case, the plaintiffs have produced the Map prepared by the DLR, which is self explanatory. The defendant has prima facie encroached upon the land owned by the plaintiffs. The statement given by the defendant before the committee constituted under

the Land Grabbing Act has recorded a finding that the defendant is in possession. The mere possession of the defendant cannot be a case in favour of the defendant as the same is unlawful. Hence, there is a prima facie case in favour of the plaintiffs. One more thing that weights with the court in deciding the present application is the statement of the Sunilbhai Chaudhary (defendant) on 12.06.2024, made before the Circle officer Vaghai. The statement holds significance in deciding the present application. The statement of the defendant Sunibhai Chaudhary is produced on record vide Mark 3/11. It reads as under,

સામાવાળાનો જવાબ

આથી અમો અનિલભાઈ શુકરભાઈ ચૌધરી, ઉ.વ.૫૬, ઘંઘો-ખેતી, રહે.રંભાસ, ગતા.વઘઈ, જી.ડાંગનાઓને આજરોજ મામલતદારશ્રી, વઘઈ તથા સર્કલ ઓફિસરશ્રી, વઘઈ, જી.ડાંગ ધ્વારા રૂબરૂ પુછતા જણાવવાનું કે,

મોજે દેવિપાડા, તા.વઘઈ, જી.ડાંગના રિ -સર્વે નં.૧ વાળી જમીન કિરણભાઈ ગમ્બ્યાભાઈ ખરપડિયાના સંયુક્ત માલિકીની જમીનમાં અમોએ ૧૯૯૬ થી ૧૪૧ ચો.મી. જમીનમાં લાકડાનો શેડ બાંધી આવતા પ્રવાસીઓ માટે આ-નાસ્તા પાણી માટે હોટલ બાંધેલ છે. તથા બાજુમાં લાકડાના શેડ બાંધી ૪૨ ચોમી તથા ૩૭ ચોમી બેસવા માટેની વ્યવસ્થા કરેલ છે. તથા બાજુમાં ૨૫ ચો.મી. જમીનમાં સામુહિક સોચાલય બાંધેલ છે. આ જગ્યા અરજદારશ્રીના પિતા ગોમાભાઈ કાકડભાઈ પાસેથી અંદાજે ૨૭ વર્ષ પહેલાં આ-નાસ્તા ઘંઘા કરવાના હેતુ તેઓની મૌખિક મંજૂરીથી નો શેડ બાંધી ઘંઘો ચાલુ કરેલ ત્યારે અમો ગોમાભાઈ કાકડભાઈનાઓને મંજૂરી આર્થિક મદદ કરી લીધેલ છે. હાલ સદર જગ્યા પર હોટલ બાંધી ઘંઘો કરીએ છીએ. સદરહુ

જમીન હાલ ખેતી ઉપયોગ માટે નવી શરત પૈકીની છે. સદર જમીન વર્ષો પહેલા ગામતળ પૈકી ચાલતી હતી. વર્ષ-૧૯૬૮ માં નદીમાં રેલ આવવાથી અહીયા જે વસ્તી હેતુ કાચા પાકા ઘર હતા જે રેલ બાદ ખસેડી લેવામાં આવેલ હતા. ત્યાર બાદ આ જમીન ખેતી તરીકે અરજદારના કબજા ભોગવટાના રેકર્ડ પર ચાલે છે.

હાલ અરજદાર અનિલભાઈ શુકરભાઈ ધ્વારા ત્રણ મહિના પહેલા જમીન ખાલી કરી આપવા માંગણી કરેલ ત્યારે અમો ધ્વારા અરજદારને સમજાવતા અરજદારશ્રીને જે કાંઈ ભાડુ થાય તે આપવા જણાવેલ હતું. પરંતુ તેઓ ભાડુ લેવા માટે તૈયાર થયેલ નથી. ધારોકે સદર જમીન ખાલી કરવામાં આવે તો અમોને આર્થિક નુકસાન થાય તેમ છે. અમોની આજીવિકા હોટલ પર નિર્ભર છે. હાલ અમોને જમીન કાયદેસર કરવા સરકારશ્રીના નિયમ મુજબ જે કાંઈ દંડ ભરવાનો થાય તે ભરવા સહમત છીએ. અમોને સદર જમીન કાયમી કરી આપવા અમારો જવાબ છે.

ઉપર લખાવેલ જવાબ અમો ધ્વારા વાંચી સાંભળી અમારા લખાવ્યા મુજબ બરોબર છે. જેથી નીચે સહી અંગુઠાનું નિશાન કરી આપેલ છે.

- 11] As per the statement given by the defendant, the defendant can be said to be a gratuitous occupier of the disputed land owned by the defendant. Moreover, the defendant has come with unclean hands by stating that the portion of land in his possession belongs to R & B department. There is no support of documents to that stand taken. He is neither paying any amount to the plaintiff, nor has any authority to be in possession. It is neither his case in the written statement that the statement aforesaid is given under any duress or objection. Moreover, the Hon'ble Supreme Court in the case of *Maria Margarida Sequeira*

Fernandes and Ors Vs Erasmo Jack de Sequeria reported in 2012(3) SCALE 550, at para 101 has held as under,

101. Principles of law which emerge in this case are crystallized as under:-

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

(emphasis supplied)

12] Hence, the plaintiffs are the owners and the defendant is in illegal possession of the disputed land. The defendant is neither paying any amount or charge for his possession. The plaintiff has thus proved high standard that a prima facie case in their favour which would warrant interim injunction against the defendant. Balance of convenience therefore, tilts in favour of the plaintiffs which cannot be compensated in terms of money and thus Point No. 1 to 3 are answered in Affirmative.

13] In view of the above and for the reasons stated above, the following order is passed,

-: O R D E R : -

1] Application for injunction is allowed in terms of para 10 (1) of Exh 5, which reads as under,

(૧) સદરહુ મોજે ગામ. દેવીપાડા ચતા.વઘઈ જિ.ડાંગના ખાતા નંબર-૧૬૨ સર્વે નંબર-૧ ની કુલ જમીન પૈકી પ્રતિવાદીએ સદરહુ જમીન પર કરેલ અનઅધિકૃત દબાણ કે જે હાલના કામે સરકારી માપણીની હદ માપણી શીટમાં દર્શાવ્યા મુજબ (૧) નિશાની H થી બતાવેલ જગ્યા રી-સર્વે નંબર-૧ ના અરજદારશ્રીની છે. જેમાં આ કામના પ્રતિવાદી અનિલભાઈ સુકકરભાઈ ચૌધરીએ ક્ષેત્રફળ ૦-૦૦-૩૭ હે.આરે.ચોમી દબાણ કરેલ છે. (૨) નિશાની I થી બતાવેલ જગ્યા રી-સર્વે નંબર-૧ ના અરજદારશ્રીની છે. જેમાં પ્રતિવાદી અનિલભાઈ સુકકરભાઈ ચૌધરીએ ક્ષેત્રફળ ૦-૦૦-૪૨ હે.આરે.ચોમી. દબાણ કરેલ છે. અને (૩) નિશાની J થી બતાવેલ જગ્યા રી-સર્વે નંબર-૧ ના અરજદારશ્રીની છે. જેમાં પ્રતિવાદી

અનિલભાઈ સુકકરભાઈ ચૌધરીએ ક્ષેત્રફળ ૦-૦૧-૪૧ હે.આરે.ચોમી. દબાણ કરેલ છે તે જમીન તાત્કાલિક સ્વખર્ચે ખાલી કરે ચા કરાવી લઈ અથવા અમો વાદીના ખર્ચે સદરહુ દબાણ વાળી જમીનમાં પ્રતિવાદીનાઓ કે હરકોઈ તેમનાં માણસો નોકરો કે એજન્ટો હસ્તે પરહસ્તે સદરહુ જમીનમાં કબજા પ્રવેશ કરે કરાવડાવે નહીં કે સદરહુ જમીનનો કબજો પ્રતિવાદીઓ હમો વાદી પાસેથી બળજબરી પુર્વક પડાવી લે કે લેવડાવે નહિ તેમજ હમો વાદીઓ સદર દાવાવાળી મિલકતમાં જાતે કે હમારા માણસો,નોકર-ચાકરો મારફત ખેતીકામ તથા અન્ય ખેતી વિષયક પ્રવૃત્તિઓ કરીએ તેમાં અડચણ, અટકાવ,અવરોધ કરે કરાવે નહિ તેવી મતલબની હમો વાદીઓનાં લાભમાં ચાલુ દાવા દરમ્યાન કામ ચલાઉ મનાઈ હુકમ અમો વાદીના તરફેણમાં અને પ્રતિવાદીઓના વિરુદ્ધ ફરમાવશોજી.

2] Costs in cause.

Date : 03-06-2025.
Place: Vaghai.

[Prakash Shivaji Roundal]
Principal Civil Judge,
Vaghai
GJ01437