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**IN THE COURT OF ADDITIONAL DISTRICT JUDGE,
AT PORBANDAR.**

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**ORDER BELOW EXH. 5 & 9 IN REGULAR CIVIL
APPEAL NO. 10 OF 2023**

- [1] Present appellants (original defendants) have preferred this applications Exh.5 & Exh. 9 for ad-interim injunction in this appeal to restrain the respondents (original plaintiffs) from obstructing the appellants, their servants and vehicles to enter in the suit land for the purpose of cultivation of chickpea (chana), till final disposal of the present appeal.
- [2] Ld. Advocate Mr. A. G. Lakhani for the appellants has mainly relied on the contentions raised in the memo of appeal Exh.1. He has also filed written arguments vide Exh.32 on record. He has further argued and submitted that the appellant No.1 (Rajshi Kara Godhaniya) has ancestral agricultural land situated in Porbandar district, Kunvadar village vide Revenue Survey No.505 (Old Survey No.62/paiki 1) and appellant No.2 (Kara Chhagan Godhaniya) has ancestral agricultural land situated in Porbandar district, Kunvadar village vide Survey No.101 (Old Survey No.47/paiki 2). It is further submitted that there is 10 feet wide cart-way towards the north side in the middle of the

boundaries of Kunvadar village from east to west and then from north to east-west side to reach at Natvarnagar, Rojda and Kunvadar villages for last 50 years and the appellants and their family members are using the said cart-way and the said cart-way is related to the livelihood of the appellants. It is further submitted that the said cart-way is situated near the agricultural lands of respondent No.1 having Survey No.53 (New Survey No.101) and respondent No.2 having Survey No.48 (New Survey No.517) and it is situated between the boundaries of the agricultural lands of the appellants and respondents. It is further submitted that the respondents have placed stones in the said cart-way in the year-2017 and blocked the said cart-way. It is further submitted that the appellants have sent an application in the Chief Minister Welcome Program regarding the matter. It is further submitted that the appellants have also filed an application before the Mamlatdar, regarding which the Mamlatdar has passed an order to re-open the said cart-way in case No.7/2017. It is further submitted that the respondents have filed R.C.S. No.139/2017 against the appellants regarding which the appellants have also filed counter claim, but the learned Trial Court has allowed the suit of respondents vide order dated 31.01.2023 and rejected the counter suit of the appellants and hence, being aggrieved and dissatisfied with the same, the appellants have filed the present appeal. It is further submitted that the

appellants have the only cart-way mentioned above to pass through towards their fields and to pass their vehicles for the purpose of cultivating their agricultural produce. It is further submitted that the appellants have no other cart-way to pass through towards their fields and to pass their vehicles except the above mentioned cart-way. It is further submitted that it will take time to decide the present appeal. It is further submitted that the appellants have taken agricultural produce of chickpea (chana) by way of entering through other adjoining field and it is declared through pursis. It is further submitted that the appellants are unable to reach their residential house at their field in absence of any other alternate cart-way. It is further submitted that the appellants intend to cultivate their fields, but there is no other cart-way to pass through towards their fields and to pass their vehicles except the above mentioned cart-way and if the appellants and their servants are restrained to pass through the said cart-way, then there is possibility of severe loss to the appellants. It is further submitted that there is prima-facie case of the present appellants. It is further submitted that the appellants will suffer irreparable loss in terms of money if they are restrained to use the cart-way. It is further submitted that the balance of convenience is in favour of the appellants. It is further submitted that notice was issued regarding panch rojkam, but it was endorsed that the appellants are not residing

and it is because the appellants are unable to pass through the cart-way to reach their residential house. It is further submitted that the panch rojkam shows that there is only one cart-way in the disputed land property and the respondents have constructed a wall and blocked the said cart-way. It is further submitted that it appears from Exh.79 & Exh.45 maps that there is only one cart-way in the disputed land. It is further submitted that the counter ad-interim injunction application filed by the defendants (present appellants) was ordered to be allowed by the learned Trial Court, till final decision of the suit. Lastly, it is prayed to restrain the respondents (original plaintiffs) from obstructing the appellants (original defendants), their servants and vehicles to enter in the suit land for the purpose of cultivation of chickpea (chana), till final disposal of the present appeal

- [3] Ld. Advocate Mr. N. D. Khatri appeared on behalf of the respondents and filed written objections vide Exh.16. He has also filed written arguments vide Exh.33 on record. He has further argued and submitted that the injunction application filed by the appellants is not maintainable and hence it is required to be rejected. It is also submitted that there is no any ingredient in the present application to allow the injunction to the appellants. It is further submitted that the appellants have already obtained agricultural produce of chickpea (chana) from their

fields and hence, it is clear that the appellants are having another cart-way and it can not be said that the appellants have no any other cart-way. It is further submitted that, after the decision of the suit on 31.01.2023, the respondents have constructed wall at the boundaries of their fields and therefore, it can not be said that the appellants have no any other cart-way if they have obtained agricultural produce of chickpea (chana) from their fields. It is further submitted that the learned Trial Court has passed the judgment dated 31.01.2023 on merit in which the counter claim was rejected by the learned Trial Court. It is further submitted that the respondents have constructed wall at the boundaries of their fields and in case the present injunction application is allowed, then the respondents will be prevented from the benefits of the decree passed by the learned Trial Court. It is further submitted that the appellants had destructed agricultural produce of the respondents by way of passing vehicle tractor through the field of respondents. It is further submitted that the appellants are intended to harass the respondents and to create illegal cart-way from the field of respondents. It is further submitted that if the injunction application will be granted to the appellants, then the field of respondents will be damaged and the respondents will suffer irreparable loss in terms of money. It is further submitted that the appellants are not having prima-facie in their favour. It is further submitted that the appellants

have suppressed the material fact that the appellants had arrangement of their cart-way at the time of partition of the field with their brothers. It is further submitted that the appellants have filed the present appeal after a long period of time and sought mandatory relief. It is further submitted that the rojkam prepared by the Court Commissioner shows that there is agricultural produce of ground-nuts in the field of appellants and hence, it is proved that the appellants have already obtained the agricultural produce of chickpea (chana) through another cart-way. It is further submitted that it is mentioned in the written arguments of the appellants that the appellants have taken agricultural produce of chickpea (chana) by way of entering through other adjoining field and it is declared through pursis and it is also mentioned that they can not cultivate another agricultural produce presently, however, the rojkam prepared by the Court Commissioner shows that there is agricultural produce of ground-nuts in the field of appellants and hence, it is duly proved that the appellants have another cart-way. It is further submitted that the appellants had obtained injunction order from the Mamlatdar office and thereafter appeals were filed before the Hon'ble Principal Senior Civil Court, Hon'ble District Court as well as Hon'ble High Court, in which it was mutually decided and agreed to continue the cart-way till final disposal of the suit and to follow the final decision of the suit, however,

the appellants are trying to obtain illegal cart-way. It is further submitted that the disputed land is adjoining with other lands of the relatives of the appellants, which was divided previously and there is another way from Rozda for the appellants, but the appellants are trying to obtained illegal cart-way from the land property of the respondents. It is further submitted that the appellants have submitted that they are having the cart-way for last 50 years, but they have not proved the ingredients of Sec.15 of the Easement Act and hence, the contradictory plea made by the appellants are not maintainable. It is further submitted that the appellants are not having prima-facie case, balance of convenience and irreparable loss in terms of money in their favour. Learned advocate for the respondents has cited case-law R/Special Civil Application No.23130/2019 decided by the Hon'ble High Court of Gujarat in case of Lakhiben Bhurabhai Modhwadiya Versus Deva Karabhai Bhutiya. Lastly, it is prayed to dismiss the present injunction applications Exh.5 & Exh. 9 along with cost in the interest of justice.

- [4] The R&P of the learned Trial Court of Regular Civil Suit No.139/2017 was called for and considered.
- [5] This Court has gone through the present application, Judgment & Decree of the learned Trial Court, written objections Exh.16 and written arguments Exh.33 filed by the respondents, R&P of the learned

Trial Court as well as submissions made by learned advocates for the parties.

[6] In view of above mentioned facts, following points have arisen for just determination of this application.

- (1) Whether the appellants - original defendants prove that they are entitled to get ad-interim injunction as prayed for?
- (2) What order ?

[7] My finding regarding above mentioned points are as under:

- (1) In the affirmative.
- (2) As per final order.

REASONS

Points No.1 and 2.

Injury and prejudice, likely to be caused to the appellants and respondents.

[8] The primary purpose of granting interim relief is the preservation of property in dispute till legal rights and conflicting claims of the parties before the Court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests, i.e., injury and prejudice, likely to be caused to the appellants, if the relief is refused; and injury and prejudice likely

to be caused to the respondents if the relief is granted. Therefore, this court in the exercise of sound judicial discretion can grant or refuse to grant interim relief.

[9] It is pertinent to note here that the present appellants had preferred R/Special Civil Application No. 18546 of 2023 (Converted from SCA/30277/2023 dated 18/10/2023) in which it is observed that "Having considered the request made by the learned advocate for the petitioners, the learned Additional District and Sessions Judge, Porbandar may try to decide the stay application on merits, which has been filed by the present petitioners in Civil Appeal No. 10/2023, as early as possible."

[10] To decide the present applications, first of all it is necessary to have a look at ad-interim injunction order passed by the Trial Court at Exh. 5 & 18 in the original suit. The observation made by the learned Trial Court at para 11 to 15 is reproduced hereunder-

"11. The plaintiffs are the defendants and defendants are the plaintiffs in Mamlatdar Case No. 7/17 are in the present case. Mark 16/1 is an order passed by the Mamlatdar Court in Case No. 7/2017, under Section 5 of the Mamlatdar Court Act after hearing both the parties and considering the panch rojkam Mark 16/3 prepared on 7/10/17, 16/5, which are supported by Dhaniben Zanzabhai Odedara, the

Sarpanch of Natwarnagar, prepared on 11/8/17 by the Revenue Talati and Report of Circle Officer wherein it is clearly described that:

શ્રી કારાભાઈ છગનભાઈ ગોઢાણીયા રે. નટવરનગરના નામે નટવરનગર ગામના સ.ન.૧૦૨ વાળી ખેતીની જમીન હે ૩-૩૨-૩૭ ધરાવે છે. આ જમીનમાં આવ-જા કરવા માટે અગાઉ વર્ષોથી નટવરનગરના સ.નં.૧૦૧ તથા કુણવદર ગામના સ.નં. ૫૧૭ વચ્ચેથી પસાર થતા રસ્તામાંથી નીકળતા હતા. પરંતુ છેલ્લા ૫ માસથી નટવરનગરના સ.નં.૧૦૧ ના ખાતેદાર ભીમા અરભમ ગોઢાણીયાના વહીવટકર્તા રામા અરભમ ગોઢાણીયા રે. નટવરનગર તથા રાજુ રામા ગોઢાણીયાના કુણવદરના સ.નં. ૫૧૭ વાળાઓએ તેમની માલીકીની જમીનમાં ઉપરોક્ત રસ્તો અગાઉની સમજુતી મુજબનો ચાલુ હતો જે ખેડવાળ કરી બંધ કરી દીધેલ છે. હાલ મજીવાણાથી રોજડા તરફ જતા સીમ રસ્તાની ડાબી બાજુએ કુણવદરના સ.નં.૫૧૭ તથા નટવરનગરની સ.નં. ૧૦૧ ખુણા ઉપર પથ્થરો નાખી નટવરનગરની જમીનમાં આવ-જા કરવાનો રસ્તો બંધ હાલતમાં છે.

Mark 16/5, panch rojkam also discloses the same facts as described in Mark 16/3. The above rojkam prepared by the responsible officers of the Government and on basis of the said rojkams, the Circle Officer, Porbandar has submitted his report on 9/10/17 and on basis of it, the Mamlatdar has passed the order Mark 16/1 on 23/10/17. Perusing the above documents, it appears that the Mamlatdar Court has considered all the legal and factual aspects of both the sides.

12. The plaintiffs have got the rojkam prepared with

rough sketch of disputed way through the Court Commissioner, the said rojkam is produced at Mark 8/3. This rojkam is prepared in the presence of both the parties, Perusing the said rojkam, it is mentioned that વાદીઓની જમીનની પૂર્વ બાજુએ પ્રતિવાદીઓની જમીન આવેલ છે. પ્રતિવાદીઓની જમીનની પૂર્વ બાજુએ રહેણાંક મકાન આવેલ છે. પ્રતિવાદીઓના રહેણાંકથી પશ્ચિમ બાજુએ વાદી નં. ૧ જમીન તથા નાગા હાજા ગોઢાણીયાની જમીન સુધી કાચો ગાડા માર્ગ આવેલ છે. ત્યાર બાદ કોઈ રસ્તો આવેલ નથી. ત્યારબાદ કોઈ માર્ગ આવેલ નથી. પ્રતિવાદીઓની જમીનમાં હાલ મગફળીનું વાવેતર કરેલ છે. પ્રતિવાદીઓના જણાવ્યા મુજબ વાદીઓની જમીન વચ્ચે આસરે છેલ્લા ૫-૬ મહીનાથી ખેડીને બંધ કરી દીધેલ છે જ્યારે વાદીઓ જણાવે છે કે વાદીઓના સેઢા વચ્ચે કોઈ રસ્તો આવેલ નથી. The rough sketch also shows that the lands of defendants is behind the plaintiffs' lands, there is adjoining boundary of the the land of defendants and the plaintiff No. 1. There is also a disputed way ie the joint boundary in between the lands of plaintiff No.1 & plaintiff No 2, which joins the Cart Way of Natvarnagar-Kunvadar. It also appears that after closing the disputed way, the defendants have applied to the welcome program of Chief Minister and in pursuance of application Mark 16/6 of the defendants, the Collector has forwarded the said application by his letter Mark 16/8 to (1) Executive Engineer, R & B, Porbandar, (2) D.I.L.R., Porbandar, (3) the Mamlatdar, Kutiyana and (4) T.DO. Kutiyana, then further proceedings were extended. Thus, it can be seen that there was disputed way on which the defendants were moving, transporting their vehicle.

13. It is admitted by the plaintiffs that there was a way of one feet between their agricultural lands and the Circle Officer has mentioned in his report Mark 16/2 on basis of Revenue Map and panch rojkams of the local place that the plaintiffs (defendants of Case No.7/17) have excavated and closed the way of defendants (plaintiffs of case No.7/17), the same was forwarded to the Mamlatdar.

14. Now, looking to the entire record, the Mamlatdar Court has passed the order against the plaintiffs not to hinder the defendants for movement to the extend of three months as the subject matter is pending before the Civil Court. It also appears from the record, that the plaintiffs have not challenged the order of the Mamlatdar before the Higher Authority, nor they have challenged this order before this court that the order of the Mamlatdar is illegal, unconstitutional and against the principles of law. No doubt, the Mamlatdar Court is also a Court of Law under the Mamlatdar Courts Act and whichever order passed by the Mamlatdar Court shall be challenged before the Higher Authority. The plaintiffs have not followed the established procedure by law and directly filed present suit.

15. To adjudicate the dispute between the parties, the further evidences by both parties are required. But looking to the entire record, it appears that if the application Ex. 5 is allowed, the defendants will

suffer irreparable legal injury. On the other hand, the plaintiffs will not have any hardship than the defendants as the order of the Mamlatdar Court is in existence, it is not set aside by this court in this order. On the other hand, the defendants have filed their counter ad-interim injunction application at Ex.18 and if it is allowed, the plaintiffs will not suffer any lawful loss.

[11] Thus, the learned Trial Court has rejected the ad-interim injunction of the plaintiffs and counter ad-interim injunction Exh. 18 filed by the defendants i.e. who are at present the appellants), is ordered to be allowed in terms of para 11 (1) to the plaintiffs till final decision of this suit. Not only that but the original plaintiffs had also filed Civil Misc. Appeal No. 14/2017 challenging the above order before this Court which had been dismissed by this Court on dated 12/01/2018.

[12] Here, in the present case, it is pertinent to note that learned Trial Court has granted the suit of the plaintiffs. Thereafter, the defendants had filed application vide Exh. 136 on the same day praying that the execution of this order is required to be postponed for 30 days i.e. till the appeal period which was rejected by the learned Trial Court.

[13] As per present applications of the appellants, written objection of the respondents as well as written

arguments of both the parties, it is an admitted fact and crystal clear that the disputed cart-way is to be closed by the respondents after the judgment and decree passed by the learned Trial Court.

[14] Learned advocate for the respondents has argued that the Rojkam prepared by the Court Commissioner shows that there is agricultural produce of ground-nuts in the field of appellants and hence, it is proved that the appellants have already obtained the agricultural produce of chickpea (chana) through another cart-way. But this arguments has no any substance as the appellants have taken agricultural produce of chickpea (chana) by way of entering through other adjoining field and it is declared through pursis produced vide Exh. 22.

[15] Apart from this, as per the Rojkam and sketch prepared by the Court Commissioner with the list at Exh. 27 produced in this appeal proceedings, it is crystal clear that the respondents have constructed new stone wall on the cart-way.

[16] **A temporary mandatory injunction can be granted under Order 39 of CPC in appropriate cases.** A "Temporary Injunction" is an order by which a party to an action is required to do, or refrain from doing a particular thing until the suit is disposed of or until further orders of the court. The courts take into account the following factors when

determining whether to grant or deny an interim injunction:

- The petitioner has successfully established a prima facie case.
- The balance of convenience is in their favour.
- Moreover, the petitioner would incur irreparable injury if their request is not granted.

[17] Apart from this, here, in the present case, it is necessary to have a look at Sections 37 & 39 of the Specific Relief Act, 1963 which is reproduced as under -

37. Temporary and perpetual injunctions.—

(1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908).

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

39. Mandatory injunctions. -When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is

capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Keeping fine balance.

[18] Thus, as per above provision of law and keeping fine balance between two conflicting claims, it can certainly be said that if interim relief is not granted, this appeal will become in-fructuous. The opportunity to move Appellate Court which is provided in Section 96 of C.P.C., will be deprived. Hence, following order is passed.

[19] On perusal impugned judgment and available record, it transpires at this interim stage that the appellants - original defendants are claiming some right, title and interest in the disputed cart-way which is only one cart-way to reach their land. Whether there is any reason to interfere with the judgment and decree passed by the learned Trial Court in R.C.S. No. 139/2017 according to law or not? That question requires to decide on merits. Thus, sufficient cause has been shown. Hence, issue No. 1 is decided in affirmative accordingly.

ORDER

1. The present applications are hereby granted. The ad-interim injunction prayed by the appellants (original

defendants) is hereby granted till final disposal of this appeal.

2. The respondents (original plaintiffs) are hereby directed to remove the newly constructed wall on the cart-way belongs to appellants agricultural lands within three days from the date of this order and also directed to open the disputed cart-way to enter in the suit lands of the appellants for the purpose of cultivation of agricultural lands, till final disposal of the present appeal.
3. The respondents (original plaintiffs) is also hereby restrained to make any hindrance to the appellants (original defendants) while using the disputed cart-way till final disposal of this appeal
4. Cost be the cause in the appeal.
5. Both the parties are directed to co-operate for early disposal of this appeal as expeditiously as possible.

Signed and pronounced in open Court today 16th day of February-2024 at Porbandar.

Place: Porbandar.
Date : 16.02.2024.

(Pravinkumar H. Sharma)
Additional District Judge,
Porbandar.
UID Code No.GJ00701.