

GJPM010000702025



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Regular Civil Appeal No. 03 of 2025
Order below applications at Exh. 4 & 5.

Indrasinh Mangalbhai Baria

Vs.

Godhra Sarvajanik Shikshan Mandal & Ors.

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1. The present application at Exh. 4 has been preferred by the appellant, i.e. original defendant, under the provision of Order-39, Rule - 1 & 2 & Sec. 151 of C.P.C. seeking interim injunction against the respondents/original plaintiffs, whereas the application at Exh.5 has been preferred by the appellant to stay the operation of the judgment and order dated 02.12.2024, passed by the Ld. 3rd Addl. Civil Judge, Godhra, in Regular Civil Suit No.123/2020.
2. Notice has been issued upon the other-side. Though duly served, none has appeared on behalf of the respondents/original plaintiffs.
3. The Ld. Advocate Mr. D.B. Desai, appearing on behalf of the appellant, has submitted before this court that the Ld. Trial Court has partly allowed the suit filed by

the respondents against the appellant, which has been carried to challenge by way of the present appeal. It is submitted that the appellant has a good case and there is every possibility of his succeeding in the appeal. It is submitted that the appellant has a *prima facie* case on hand and the balance of convenience is also in his favour. It is submitted that the appellant is in possession of the suit property, hence the respondent requires to be restrained from selling or disposing of the suit property to any other person, pending the final outcome of the appeal, hence prayed to grant interim injunction against the respondent. It is also submitted that, if injunction as prayed for is granted, there shall be no prejudice to the other-side. Moreover, if the judgment and order of the Ld. Trial Court is executed and operated against the appellant, pending the appeal, there shall be irreparable loss to the appellant, which shall not be compensated in terms of money, hence prayed to stay the implementation and operation of the judgment and order of the Ld. Trial Court, till final disposal of the appeal.

4. I have perused the relevant record and on perusal of the same, it appears that the Ld. 3rd Addl. Civil Judge, Godhra has partly allowed the suit in favour of the respondents/original plaintiffs and declared the appellant/defendant as trespasser and directed him to

surrender the possession of the suit property to the plaintiff and also permanently enjoined to act upon the property. Thus, considering the fact that the appellant/original defendant has been directed to surrender the possession of the suit property, it is quite evident that at the time of deciding the suit, the appellant/original defendant was enjoying possession over the suit property and continues to do so. Under the circumstances, if the judgment and order of the Ld. Trial Court is operated against the appellant and he is evicted from the suit property, the present would become infructuous. Thus, as the appellant is in possession of the suit property and he has approached the appropriate forum by way of filing this regular civil appeal, his possession requires to be protected till the final disposal of the appeal and in view thereof, I pass the following order in the larger interest of justice :

ORDER

1. The present applications preferred vide Exhibit- 4 & 5, are hereby allowed.
2. The operation of the order and judgment dated 02.12.2024, passed by the Ld. 3rd Addl. Civil Judge, Godhra, in Regular Civil Suit No.123/2020, is hereby stayed till the final disposal of this appeal.

3. The respondents (original plaintiffs) are hereby restrained from disposing off the suit property by way of sale, mortgage, gift or transfer the suit property in any other manner to any other person till the final disposal of the appeal and they are also restrained from dispossessing the appellant (original defendant) from the suit property in any manner, either personally, by their agents or any other means, till the final disposal of the regular civil appeal.
4. There shall be no order as to costs.
5. Copy of this order be sent to the Ld. Trial Court.

Pronounced in the open Court today,
on this 11th day of February, 2025.

Dt.11.02.2025.
G O D H R A.

(Chandrapalsingh K. Chauhan)
Principal District Judge,
Panchmahals, at Godhra.
[UID Code No. GJ-00513]

Shyam Shankaran