

R. C .S. No. 44/2022**Order below exhibit.5**

1. Perused this application of exhibit.5, and heard the parties. The plaintiff has filed this suit For Declaration and Permanent injunction and along with the Suit, has filed this present application *vide* exhibit.5 under Order 39 Rule 1, 2 and Sec. 151 of C. P. Code, 1908, for temporary injunction restraining the defendants from any kind of interference with the possession of the plaintiff in the suit property, either personally or through their agent or transfer, alienate or create any mortgage of the property till the final disposal of the suit.
2. The brief facts of the plaintiffs' case and the description of the suit property situated at Derol Station Road of Kalol Taluka of Panchmahal Dist: on west side of Plot no.11 in the survey no.170/A/3 is as under:

Description of the property
house no.1142
house no.1142/A

The Plaintiff has filed the present application and stated that the plaintiff and the defendant no.1 are brothers and that the plaintiff and the defendant no.1 had jointly purchased the suit land vide registered Sale deed in the year 2008 and that thereafter each of the brother had constructed house on the suit land from their respective self acquired income, it is the say that plaintiff that when the suit land was

Pri.Sr.Civil.Judge
Kalol

purchased, the defendant no.1 being the elder brother, it was agreed to purchase the suit land in the name of the defendant no.1 and that at the time construction of the house on the suit land the mother of the plaintiff and defendant no.1 had given amount rupees 2 lakh to both of them for the construction, and that since the construction of the houses the plaintiff has been in possession and owner of the house no.1142/A and that the akarni patrak of the house no.1142/A has the name of the plaintiff and that the plaintiff pays the property tax and the electricity bill of the house no.1142/A and that the defendant had been in possession and ownership of the house no.1142. It is further said by the plaintiff that though the plaintiff is the owner and possessor of the house no.1142/A, the defendant without any kind of oral or written consent of the plaintiff got the name of the plaintiff struck down from the akarni patrak of the house no.1142, in collusion with the defendant no.2 against which the plaintiff had raised objection, yet the name of the plaintiff was struck down and that the defendant taking advantage of his name in the akarni patrak of the house no.1142/A is trying to dispossess the plaintiff from the house no.1142/A and therefore the plaintiff has filed the present application for restraining the defendant from interfering with the plaintiff possession and for restraining the defendant from transferring or changing the form of the property during the pendency of the suit and that the plaintiff has the prima facie case and balance of convenience in his favour and is likely to suffer irreparable loss if the application is not granted and therefore the plaintiff have filed the present suit for Declaration, Permanent Injunction against the defendant and along with

the suit have filed the present application for restrain the defendant from transferring, alienating the suit property during either by themselves or through their agent till the disposal of the suit.

3. Upon presentation of the suit, the summons / notices were issued to the defendants and upon receipt thereof, the defendant no.1 appeared through their Adv. P. D .Pathak and filed the written statement and counter claim vide exhibit .09 and in their reply denied the contention of the plaintiff in toto and further stated that the suit property is of the ownership of the defendant and that during the time of covid ie. the year 2019 the defendant had given the plaintiff said disputed house for temporary basis and that thereafter when the defendant requested plaintiff to hand over the possession of the suit property to the defendant the plaintiff did not comply with and on the contrary gave false notice to the defendant on 17/06/2022 , to which defendant had given reply and also filed case of land grabbing against the present plaintiff for getting back the possession of the suit property from the plaintiff and that the plaintiff gave the threat of transferring the suit property to some other person and therefore the defendant has filed along with the reply the counterclaim.
4. The plaintiff has produced the following documents in support of his case

Sr. No.	Description	Mark
1	Copy of the akarni patrak of house no.1142/A	3/1
2.	Copy of gram panchayat vera pavti of house	3/2

	no.1142/A	
3.	Copy of Mangna bill of house no.1142/A	3/3
4.	Copy of electricity bill of house no.1142/A	3/4
5.	Copy of notarised affidavit	3/5
6.	Copy of notice given to defendant	3/6
7.	Copy of reply of notice	3/7
8.	Copy of objection raised by the plaintiff	3/8
9.	Copy of application for obtaining copy of resolution no.185	3/9
10.	Copy application of the defendant for akarni	3/10

5. The defendant have not produced following documents in support of their case.

Sr. No.	Description	Mark
1	Copy of the Village form no.8A of khata no.3976	24/1
2.	Copy of the Village form no. 7A of revenue survey no.170 A 3 paiki 1/paiki 1	24/2
3.	Copy of the property card of revenue survey no.170 A 3 paiki 1/paiki 1	24/3
4.	Copy of registered sale dee no.1145/08	24/4
5.	Copy of entry no.12708 in village form no. 6A	24/5
6.	Copy of vera pavti of house no.1142	24/6,24/7,24/9
7.	Copy of akarni of block no.170/A	3/8

8.	Copy of vera pavti of house no.1142A	24/10
9.	copy of index of reg sale deed no.1142	24/11
10.	Copy of the akarni certificate of house no.1142 and 1142 A by talati	24/12
11	Copy of resolution and processing of resolution no.185,	24/13,24/14
12	Copy of certificate of measurement of house no.1142 and 1142A	24/15
13.	Copy of the electricity bill	24/16
14.	Copy of complaint file by the defnendant online copy and notarised copy	24/18,24/19

6. Thereafter I have heard the arguments of the ld. advocate for the Plaintiff and Defendant and considered the written argument submitted vide exhibit.22 and 23 respectively.

7. Considering the facts and circumstances of the suit, submission on behalf of the parties the following issues for determination arise-

Issues

1. Whether the plaintiffs have a *prima facie* case?
2. Whether the balance of convenience is in the plaintiff's favour?
3. Whether the plaintiffs will suffer irreparable injury if the

injunction prayed for is not granted?

4. What order?

8.Findings

My findings on the above issues are as-

1. In Negative
2. In Negative
3. In Negative
4. As per final order.

9. **Reasons**

Issue No. 1-

First of all it is clear that the party who is seeking injunction should establish his *prima facie* case for obtaining injunction. *Prima facie* case should not be confused with case proved to the hilt. It is no part of the court's function at this stage to try to resolve a conflict of evidence nor to decide complicated questions of fact and law which call for detailed arguments and consideration, as held by the Apex Court in **Martine Burn Ltd. v/s Banerjee 1958 AIR 79.**

Now if we consider this in context with the present suit, To find out substance in the submission of the Ld. advocates for the parties & whether the plaintiff has a *prima facie* case, I think it proper to consider the documentary evidences & affidavits filed by the parties. Now through the application the Plaintiff have submitted that the the plaintiff and the defendant no.1 are brothers and that the plaintiff and the defendant no.1 had jointly purchased the suit land vide registered Sale deed in the year 2008 and that thereafter each of the brother had constructed house on the suit land from their respective self

acquired income, it is the say that plaintiff that when the suit land was purchased, the defendant no.1 being the elder brother, it was agreed to purchase the suit land in the name of the defendant no.1 and that at the time construction of the house on the suit land the mother of the plaintiff and defendant no.1 had given amount rupees 2 lakh to both of them for the construction, and that since the construction of the houses the plaintiff has been in possession and owner of the house no.1142/A and that the akarni patrak of the house no.1142/A has the name of the plaintiff and that the plaintiff pays the property tax and the electricity bill of the house no.1142/A and that the defendant had been in possession and ownership of the house no.1142 and that though the plaintiff is the owner and possessor of the house no.1142/A, the defendant without any kind of oral or written consent of the plaintiff got the name of the plaintiff struck down from the akarni patrak of the house no.1142, in collusion with the defendant no.2 against which the plaintiff had raised objection, yet the name of the plaintiff was struck down and that the defendant taking advantage of his name in the akarni patrak of the house no.1142/A is trying to dispossess the plaintiff from the house no.1142/A, now with regard to these contentions of the plaintiff if we look into the documentary evidence submitted by the plaintiff it appears that the plaintiff has produced the copy of the copy of the akarni patrak of the suit property vide mark 3/1, the copy of the property tax mangna bill and electricity bill vide mark 3/2 to 3/4, but here it is noteworthy that all of these documents are of the year 2019 to 2022, the plaintiff has produced no document like property tax, electricity bill etc prior to 2019, which he would have paid prior to 2019 too if he were owner and possessor of the property prior to 2019, on the contrary these documents do corroborate the version of the

defendant that the plaintiff has been in possession of the suit property since 2019 that the plaintiff ,on other hand if we look into the document produced by the defendant in support of his version ,it appears that the defendant vide mark 24/4 has produced the registered sale deed no.1145/2008, now if we look into the name of the purchaser it appears that name of only defendant is mentioned, nowhere in the sale deed the name of the plaintiff is mentioned and it is registered sale deed that too of the year 2008, therefore if the plaintiff say that the sale deed was executed in the name of the defendant because he was elder of the house, the burden is on the plaintiff to prove the same through leading evidence. Further the plaintiff has stated that the suit land was purchased in the year 2008 by the plaintiff and the defendant in co-ownership and to prove same the plaintiff has produced the copy of the affidavit of their mother vide mark 3/5, but here it is noteworthy that the sale deed produced by the defendant is the registered sale deed and in that nothing as asserted by the plaintiff is mentioned, hence if the plaintiff asserts that the suit property was purchased in co-ownership by the plaintiff and defendant ,the burden to prove same is on the plaintiff but at this juncture the plaintiff has failed to prove the same , and the assertion of mother is a matter of evidence which cannot be decided unless the evidence is recorded. Hence Considering the facts and circumstance discussed above,I am of the view that at this stage the plaintiff have prima facie failed to prove that he is the owner of the suit property and have prima facie case,Hence I answer **issue no.1 In Negative.**

Issue No. 2 & 3 -

Considering the facts and circumstances of the case and submission on behalf of the parties I think it proper to discuss and decide issue no. 2 & 3

concurrently to avoid unnecessary repetition for the sack of brevity.

In discussion of issue no.1 this court finds a *prima facie* case of the plaintiffs, but in

Dalpat kumar V/s. Prahlad Singh, reported in AIR 1993 SC 276, the Hon'ble Supreme Court has observed that the phrases '*prima-facie* case', 'balance of convenience' and 'irreparable injury' are the rhetoric phrases for incantation but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice.

Further the Hon'ble Supreme Court also held that 'only *prima-facie* case is not sufficient to grant injunction, the Court further has to satisfy that non interference by the Court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession.

Now so as far as balance of convince and irreparable injury is concerned, on considering the document produced on record, it discloses that the plaintiff is in the possession of the suit property, but it is well settled law that possession follows the title and plaintiff has failed to prove that he has any right title interest in the suit property and that he has balance of convenience in his favor and that he is likely to suffer irreparable loss if injunction is not granted, on other hand. So I reply issue no.2 & 3 in Negative and pass the following final order-

ORDER

The Temporary Injunction Of the Plaintiff is hereby Rejected.

Cost shall follow the final disposal of the suit.

Pronounced today in open court on 13th February 2024.

Dt: 13 /02/2024

(R.G.Yadav)
Code No: GJ00974
Principal Sr. Civil Judge,
Kalol @Panchmahal

Pri.Sr.Civil.Judge
Kalol