



Order Below Exh:- 5

- (1) Plaintiff has filed the present suit against the Defendant's and at this stage this is an application filed by the Plaintiff for seeking temporary injunction under Order-39, Rule-1 & 2 and Section.151 of Code of Civil Procedure.
- (2) The plaintiff has filed documents vide mark-4/1 to 4/4 along with his plaint and injunction application. The summons/notice was issued against the Defendant's and it was duly served. Thereafter, the Written Statement and reply to this application of Defendant No. 2 vide Exh. 10 which has been adopted by the Defendant No. 1 vide Exh.9 has been submitted. Thereafter, the Counter affidavit has been submitted by the Plaintiff vide Exh.13. Thereafter, the written arguments by the plaintiff and the Defendant's of the application has been submitted vide Exh. 14 and 15, respectively.
- (3) The **Laconic Gist** of this application is, the plaintiff states that he is residing in the house situated in Gujarat, District Rajkot, Taluka Rajkot, Village Motamava, land bearing Revenue Survey No. 50/1 paiki 2, F.P. No. 72/1 which is identified as Shri Sitaram Park Co-operative Housing Society (proposed) paiki Plot No. 165-A land admeasuring 53-76 sq. yards. The said house is hereinafter referred to as the "suit property".

The Plaintiff states that he is living in the said house with his family since 2004/2005 and an oral agreement was executed between the family of the Plaintiff and the Defendant No.1. Recently, various disputes arose with respect to the other plots near to the suit property and various suits were filed

in the Court with respect to those plots. Hence, the Plaintiff executed a sale agreement with Dhavalbhai Bharatbhai Parmar on 26/01/2025 for protection of his right, interest and share in the suit property. The Plaintiff also got the notarized possession receipt and receipt of payment of consideration at the time of sale agreement. The Plaintiff further states that the suit property i.e. the plot was allotted to Samjuben Chunilal Sakariya by the predecessor of the Defendant No. 1 and thereafter, the Plaintiff has obtained the right in the suit property on the basis of the sale agreement, possession receipt and receipt of consideration. The share certificate and receipt was given in favour of Samjuben Chunilal Sakariya at that time and thereafter, Samjuben Chunilal Sakariya became the possessor of the suit property. Due to oral agreement between the Plaintiff and Defendant No. 1 in 2004/2005, the Plaintiff became possessor of the suit property and being in the possession of the suit property since 2004/2005, the Plaintiff is the owner of the suit property by adverse possession. The Plaintiff further states that he is residing at the suit property with family for many years and he is paying the taxes of the suit property and holds an electricity connection from PGVCL for the suit property. The authority of PGVCL has also issued certificate with respect to electricity connection. The Plaintiff further stated that various submissions have been made to the Government for regularizing the proposed society and a resolution was also passed by Mota Mava gram panchayat on 29/10/2018 and a request letter was also sent to District Collector on 20/10/2018. Further, the Defendant has also requested to convert the land to non-agricultural land but the same has been rejected by the District Collector on 08/09/2021. The Plaintiff further states that he is in possession of the suit property for long time and no objection has been raised by anyone regarding possession of the Plaintiff in

the suit property but the Defendant No. 1 has been shown as possessor of the suit property in the revenue records which is illegal. The Plaintiff states that the Defendant has no right to interfere with possession of the Plaintiff in the suit property and he is in peaceful possession of the suit property since 2004/2005 but the Defendants came upon the suit property and intimidated and threatened the Plaintiff to vacate the suit property. has prayed that the Defendants be restricted from interfering with possession of the Plaintiff on the suit property and from conveying/transferring the suit property to any other person and from creating encumbrances upon the suit property till final decision of the suit. Hence, this application.

(4) In this plaintiff has mainly urged for the relief:-

It is prayed that an interim injunction be granted in favour of the Plaintiff to restrain the Defendants themselves or through their agents, servants, attorneys or anyone else from using or enjoying the property, or to prevent any person, firm or institution from selling, transferring, assigning, mortgaging, encumbering or otherwise encroaching the land.

(5) As per the Judgement, **Harshadkumar Kantilal Bhalodwala and Anr. Vs. Ishwarbhai Chandubhai Patel and Ors. Reported in 2010(1)G.L.H. 151**, the Hon'ble High Court of Gujarat held that *“while granting of interim injunction court has to consider three aspects i.e. prima facie case, balance of convenience and irreparable loss. Even in case of prima facie case, court may refuse interim injunction if balance of convenience and/or irreparable loss aspects are not in favour of plaintiff.”*

(6) This is an application for seeking temporary injunction and there are three basic principles for granting or refusing to grant temporary injunction i.e. prima facie case in favour of the party seeking injunction, Balance of

convenience in favour of such person and last there must be irreparable loss which is likely to be caused to party if injunction is not granted to such person. Thus, an injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. In addition to these three basic principles for granting or refusing to grant injunction, the conduct of the person seeking injunction should also be taken in to consideration because the granting of injunction is an equitable relief and is drastic or serious order and there are two basic maxims of equity which are important to be consider at the time of deciding injunction application which are “He who seeks equity must do equity” and “He comes to equity must come with clean hand”.

- (7) While deciding the present application following issues arise for the adjudication of the present application:
- i. Whether the prima facie case is in favour of the plaintiff?
 - ii. Whether the balance of convenience is in favour of the plaintiff?
 - iii. Whether irreparable loss and injury would be caused to the plaintiff if present application is not granted?
 - iv. What order?

(8) Answer to the above issues are as below:

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

(9) **REASONS:-**

Issue No. 1 to 3

As the factual aspects of all these issues are interconnected, for the purpose of avoiding the repetition of facts all these issues are discussed altogether.

In the present case, the Plaintiff has sought the relief of temporary injunction with respect to the suit property stating that he has become the owner of the suit property by way of adverse possession as he is in possession of the suit property since 2004/2005. The Plaintiff has contended that the suit property has been conveyed to him in 2025 by Dhavalbhai Bharatbhai Parmar through a sale agreement which has been submitted at Mark 4/1. The Plaintiff has also submitted share certificate at Mark 4/2, certificate at Mark 4/3, and receipt at Mark 4/4 respectively, it has been issued in the name of Samjuben Chunilal Sakariya by Sitaram Park with respect to the suit property and the sale agreement at Mark 4/1 shows that the suit property has been conveyed by Dhavalbhai Bharatbhai Parmar to the Plaintiff but none of the documents have been submitted by the Plaintiff which shows that the suit property was owned by Dhavalbhai Bharatbhai Parmar. Further, there is nothing on record which shows that Dhavalbhai Bharatbhai Parmar has right to convey the suit property in favour of the Plaintiff. None of the documents submitted by the Plaintiff prima facie proves the possession of the Plaintiff upon the suit property for more than 12 years. Simply stating the averments in the plaint and claiming relief of temporary injunction without any proper evidence is not allowed in law specially when the relief of temporary injunction is sought showing urgency that the Defendants are trying to sell/convey the suit property. Firstly, the duty is cast upon the Plaintiff to come up with relevant documentary evidences in support of his claim but in the present case, the

Plaintiff has failed to submit any such documents. Whether the Plaintiff is possessing the suit property for more than 12 years is the matter of evidence.

On perusal of the whole documentary list submitted and relied upon by the Plaintiff, there is nothing on record which shows continuous possession of the Plaintiff upon the suit property. Further, the society which has been mentioned by the Plaintiff is proposed society but the Plaintiff has not even submitted any document with respect to the proposed society. The Plaintiff has not even submitted any document which shows the revenue entry on the suit property as mentioned by the Plaintiff in his plaint. The Plaintiff has also contended in this plaint regarding application submitted to the District Collector for conversion of land to non-agricultural land but no such document/application has been submitted by the Plaintiff. All these aspects are the matter of evidence.

As per the Judgement, **JAGANBEN ARVINDBHAI PATEL Versus STATE OF GUJARAT**, Civil Revision 824 of 1995 Decided On: 02/24/1999, Citation: 1999 1 GLH 846, Hon'ble Gujarat High Court Judge name: S.K.Keshote, In fact and substance, the grant of temporary injunction result in granting of final relief in favour of the plaintiff. The matter needs to be examined yet from another aspect.

See STATE OF U.P. V/S VISHVESHWAR, 1995 SUPP. (3) SCC 590. Interim order should not amount to over-reaching the main relief which ultimately the Court may or may not grant. See **GOVERNMENT OF ASSAM EDUCATION DEPARTMENT V. ASHOK K. KOHLI**, 1995 SUPP. (4) SCC 214. Interim order in substance giving the principal relief in the petition, such practice is

depreciated by the Apex Court in the case of **BANK OF MAHARASHTRA V. RACE SHIPPING AND TRANSPORT COMPANY**, AIR 1995 SC 1368.

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A Bench of three Judges of this Court held that "a party is not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles-*ex debito justitiae*.

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72. Before we focus our attention to the evidence on record in answering these three issues, in the light of arguments advanced by the counsel to the parties, **it must be borne in mind that injunction being a discretionary remedy, a Court may not grant an order of injunction, even if all the three necessary ingredients are established** and those ingredients are prima facie case of infraction of legal rights, such infraction causes irreparable loss and injury to the plaintiff and the injury is of such nature that it cannot be compensated by way of damages.

- (9) It is being held in the decision delivered in the case of **ADANI EXPORTS LTD VS. HINDUSTAN ORGANIC CHEMICALS LTD 2000(3) GLR 2759 = 2000(3) GLH 620** that is not necessary for the court to

examine merits of the case to ascertain whether the plaintiff is likely to succeed. In the circumstances, bare statement by the plaintiffs without any cogent documentary evidence will not frame his case prima facie. Further in regards to the prima facie case, a well settled proposition of law has been established in the case of **SHIV SHANKER GOYAL AND ORS. VS. THE MUNICIPAL COUNCIL, AJMER -AIR 1997 RAJ,176** where the Hon'ble Rajasthan High Court has observed that "A prima facie case implies the probability of the plaintiff obtaining a relief on the materials placed before the court. Every piece of evidence produced by either party has to be taken into consideration in deciding the existence of a prima facie case to justify issuance of a temporary injunction". So, the question before the court is whether any such facts or materials have been placed before the court, which would enumerate the probability of getting relief.

- (10) In view of the above stated reasons, if this application is not allowed then it will serve the purpose of law and will meet the ends of justice. As discussed above the plaintiffs cannot be said to have established prima facie case in his favour and it is well settled law that the person who has failed to prove prima facie case is not entitled to equitable remedy of temporary injunction even if the balance of convenience and the aspect of irreparable injury is in favour of such person. As far as, the balance of convenience is concerned in the present case, it is not in the favour of the plaintiff and it does not seem that any hardship would be caused to the plaintiff, if this application is not allowed. So in view of the aforesaid reasons, this court is of the opinion that the equitable jurisdiction of granting temporary injunction cannot be invoked and the application deserves to be dismissed. Hence, I hereby pass following order in the interest of justice.

ORDER

- The present application is hereby rejected.
- Cost shall be the cost in the cause of this suit.

Signed, Pronounced and Declared today in open court on **January 30th, 2026.**

Place: Rajkot

Date : 30/01/2026

**(Jayshri P. Goyal)
9th Addl. Civil Judge,
Rajkot.
GJ01773**