

ORDER BELOW EXHIBIT 5 IN REGULAR CIVIL SUIT

NO.19/2024

1. The plaintiff has filed the present application for seeking temporary injunction against defendants. The defendants had filed their reply vide Exhibit 14. Whereas both the Learned Advocates were duly heard by this Court for deciding the present application on merit.

2. This Court has gone through the record and pleadings of the parties. To adjudicate the application following points for determination may arise:-

1. Whether the plaintiff show his *prima-facie* case?
2. Whether the Balance of convenience is in favor of the plaintiff?
3. If injunction would not be granted than irreparable injury will cause to the plaintiff?
4. What order?

3. My answer regarding points for determination:

[1] In Negative.

[2] In Negative.

[3] In Negative.

[4] As per final order.

:REASONS AND FINDINGS:

4. As all the issues are interrelated and interconnected, it is in the interest of justice to deal with all the issues together. As per order 39 R 1 and 2 of the Code of Civil Procedure, the temporary injunction can be granted by a court in the following cases:

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

The power to grant a temporary injunction is in the discretion of the court. This discretion however, should be exercised reasonably, judiciously and on the legal principles. Injunction should not lightly grant as it adversely affects the other side. Generally, before granting the injunction, court must satisfied about the following aspects namely, prima-facie case, irreparable injury and balance of convenience.

5. The first rule is that the applicant must make out a ***prima facie case*** in support of the right claimed by him. The court must be satisfied that there is a bona fide dispute raised by the applicant, there is strong case for trial which needs investigation. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima-facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.

6. Existence of the prima facie case alone does not entitled the applicant for a temporary

injunction, but the applicant must satisfied the court that he will suffer **irreparable injury** if the injunction as prayed for is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

7. Third condition for granting interim injunction is that the **balance of convenience** must be in favor of the applicant. In other words, court must be satisfied that the comparatives mischief hardship or inconveniences which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

8. I am not preventing myself from quoting celebrated and remarkable observation by **Lord Diplok** in **American Cynamid Co. V/s. Ethicon Ltd 1975(2) WLR 316**, *"The object of the interlocutory injunction is to protest the plaintiffs against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial; but the plaintiff's need for such protection must be*

weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favor at the trial. The court must weigh one need against another and determine where the balance of convenience lies."

9. Now moving on to the merits of the present application, it appears to this Court that the plaintiff has appeared before this Court with the contention that the plaintiff and the defendant no.2 are from same family and the grandfather of the defendant no.2 who was also a father in law of the plaintiff who was having a land no.366 at village Daliya serial no.107 (Herein after referred as "Suit property") which was given to the husband of the plaintiff in year 1985 and the plaintiff was residing in that house but in year 2010 the fabricated registered sale deed was executed in

the sale deed the photo of open land is showing but in reality the house is there and than in year 2018 the defendant no.2 had sold the suit property to the defendant no.1 without any right and there may be chance for further sale of the disputed land so kindly restrain the defendant no.1 till the final disposal of the suit. *Per contra*, the defendants had submitted before this Court that the the plaintiff and her family is residing in the house of father in law and the sale deed is registered and true and the plaintiff was not having any possession of the suit property, So kindly reject the present application.

10. Now, perusing the record, it appears to this Court that the plaintiff and the defendants are from the same family and as per the plaint defendant no.2 and the plaintiff are residing on the same address, and to show his case the plaintiff had produce the revenue records and the revenue receipts and claim her right on the basis

of adverse possession but the concept of adverse possession is subjective concept cant be asses on mere documents that is revenue records. Further the plaintiff challenged the registered sale deed and only on the basis of photo that can only be asses with the further evidence, therefore in such scenario, this Court is of the view that the plaintiff had failed to show his *prima-facie* right, balance of convenience and irreparable loss in his favour but if the present application is allowed more loss will caused to the defendant no 1.

11. Further perusing the documentary evidence produced by the plaintiff that is mark 3/2 to 3/7 is revenue records out of which mark 3/2 and 3/3,3/7 is on the name of the father in law of the plaintiff who sold the land to defendant no.1, and the mark 3/4 to 3/6 is of year 2015 on the name of Premjibhai but while considering the plaint premjibhai expired in year 2011, and the mark 3/8 is electric bill of year 1996 on the name

of Premji Bhai. Now considering all the document produced by the plaintiff is not showing the prime facie case of the plaintiff.

12. Taking the above-said discussions into consideration, this court of the view that the plaintiff has failed to show the *prima-facie* case whereas he had failed to show balance of convenience and irreparable injury in his favor. Therefore, in the interest of justice, this court pass the following order:-

:: O R D E R ::

- The present application is hereby rejected.
- No order as to cost.

Signed and Pronounced in this open court on this 26th day of April 2024.

26/04/2024

Gondal

(Ranveer Singh Rathore)

2nd Add. Civil Judge
Gondal.

GJ01374