

Order Below Exhibit-5

- (1) This is an application for seeking equitable remedy of temporary injunction filed by the plaintiffs under Order-39, rule-1 and 2 read with Section-151 of The Code of Civil Procedure, 1908, restraining defendants from interfering with plaintiff's possession of the suit property bearing survey no-303 plot converted commercial purpose land situated at Mevasa to Moti Bhadara Gam road northern side which is mentioned in para-3 of the plaint.
- (2) The notices were issued by the court and it was duly served to the defendant. The defendants have appeared before the court through an Advocate. The plaintiff has filled documents vide mark-3/1 to 4/7 and 17/1 to 17/7. The defendant have submitted written statement vide exhibit-15. The plaintiffs have submitted their counter affidavit vide exhibit-16.
- (3) Heard the Ld. Advocate for the Plaintiffs. He contended as per the application for temporary injunction. He further contended that the defendant has given on 5 years rent contract his land located as Mevasa to Moti bhadara gam northern side of road plot bearing serve no.303 converted for commercial purpose which has been give to plaintiff for the period of 5 years from 1/10/2019 to 1/10/2024 for the rate of Rs.1000/= per month to use this as godown plaintiff is having mini oil mill in which he is pealing of chestnut oil and plaintiff is using this disputed shade by the name of Pramvati mini oil mill and having machinery and raw material related to his business of value of Rs.10,00,000/- in this shade. He further submitted that the suit property came into hand of the plaintiffs as tenant of the said property. Now as plaintiff's son along with some strange auto driver had

come on 30/8/20 to this suit property without knowledge of plaintiff and absence of plaintiff had entered in the gowdown breaking the lock and had stolen some waste material from this shade and when in the morning they were denied to do such activities they begin to fight with plaintiff. Thus had to bring this suit. He further contended that there is prima facie case in favour of the plaintiffs and the balance of convenience is in their favour and if the temporary injunction would not be granted in favour of the plaintiffs, the plaintiffs will have to suffer irreparable injury which would not be compensated or mitigated in terms of money. Hence prayed for temporary injunction.

- (4) Heard the Ld. Adv. for the defendants. He contended that the suit of the plaintiffs is required to be dismissed along with application for temporary injunction with cost since it does not disclose any cause of action in favour of plaintiff against defendant and the plaintiff are not tenant of defendant and have no right, title or any kind of interest into suit land. He further submitted that the suit property was never given on rent to plaintiff and plaintiff have wrongly averred in their plaint that suit property is given on rent to him but suit property is in possession of the defendant. He further contended that documents which plaintiff has submitted are all wrong and falsely created. He further contended that actually the plot was given to plaintiff with the commitment to give 50% profit from the business income of oil mill but till date plaintiff has not given this 50% share from the income and now wants to wrongly and illegally want to take possession of defendant's property by making false accusation of stealing. He further contended that no prima facie case has

been established by the plaintiff and if the injunction would be granted in favour of the plaintiff, the defendant would have to suffer irreparable loss. Hence prayed for rejection of application for temporary injunction.

(5) This is an application for temporary injunction and there are three basic principles for granting 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 a irreparable loss which are 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 this 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".

(6) Looking to the materials on record and the arguments advanced by the Ld. Adv. for the plaintiff and defendant, it appears from the document produced vide mark-3/1 is the rent deed presented by plaintiff showing that the disputed land i.e. Shade was given on rent as per the contract from 1/10/2020 to 1/10/2024 and whether this rent agreement is wrong or forged document is the matter of evidence at this stage on perusing court commissioner report filed vide Exh.12 mark:12/1 raw material and articles lying in the

godown are of the oil mill and there is nothing brought before this court by defendant to show that they are in possession of the disputed property and have never rented this property to plaintiff ever. It also appears from the reply filed by defendant that plaintiff was asking to start oil mill at defendant's land and for that he had contacted defendant's Son and asked to defendant's son that if the oil mill will be allowed to be started at their land he will give defendant's Son 50% of profit from the income of this oil mill which plaintiff didn't give and so it is admitted that defendant had given the suit property for use to plaintiff. After carefully considering and perusing the report of court commissioner which is produced vide mark-12/1, it transpire to this court that the plaintiff is in the possession of suit properties. It also appears that the defendants have not submitted any document to prove their possession over suit property along with their written statement. And the defendants have not produced anything contrary to the fact of the plaintiffs to show that the plaintiffs are not in possession of suit property. At this juncture, what is required to be seen is the establishment of prime facie case in favour of the persons seeking temporary injunction, a balance of convenience in favour of such persons and causing of irreparable injury, in case of granting or refusing to grant temporary injunction. The ultimate object of temporary injunction is to maintain a status quo till the further orders of the court or final disposal of the suit and temporary injunction is an interlocutory order which does not finally determines the rights and obligations of the parties and the ultimate object of granting temporary injunction is the preservation of the disputed property. It is also well settled law that

the person in possession of property should be protected except in case he has no right, title or interest in the said property and the said thing has to be established or shown to the court that the person even if is in possession of any property not entitled to be protected by the court. Looking to the material on record there is nothing on record to show that the plaintiffs are not entitled to be protected. So in view of the aforesaid fact, the plaintiff can be said have established prima facie case in his favour by showing their possession over suit property and the balance of convenience is also in his favour and if the temporary injunction would not be granted in favour of the plaintiff, the plaintiff will have to suffer irreparable injury which would not be compensated in terms of money. Hence, the application for temporary injunction filed by plaintiff is deserved to be partly granted till the final disposal of the suit. Hence, I hereby pass the following order in the interest of justice.

ORDER

The application for temporary injunction is partly allowed.

The defendant is hereby ordered that they shall not interfere and/or obstruct with the plaintiff's possession of suit property bearing survey no-303 plot converted commercial purpose land situated at Mevasa to Moti Bhadara Gam road northern side which is mentioned in para-3 of the plaint until further order of the court or the final disposal of suit.

Cost shall be the cost in the cause of the suit.

Pronounced in the open court on December 31st 2021.

(Heena Jitendrabhai Brahmhatt)
Addl.Sn. Civil Judge
Jetpur.
Judge Code GJ-01172