

Order below Exhibit 5

RCS 30/2014

1. Heard the Ld. Advocates appearing for the parties. Read the application and perused the records of the Court. The plaintiff has preferred the present application under the provisions of Order 39 Rule 1 and 2 and section 151 of the Code of Civil Procedure.
2. It is the say of the plaintiff that he has filed the present suit for Declaration and permanent injunction. As per the contentions raised in the present application and the arguments advanced by the Ld. Advocate for the plaintiff, he has purchased the land bearing revenue survey no. 122 paiki admeasuring about acre 0-08 guntha (half bigha) of moje: Mevasa from the father of the defendant no. 4 named Harijan Dhaya Mula vide a registered sale deed bearing serial no. 782 dated 26/07/1990. The four direction quadrilateral of the same property is as follows –

East side : land of Dhaya Mula bearing survey no. 122 paiki,

West side: land of Bachu Thakurshi,

North side: land of Dhaya Mula bearing survey no. 122 paiki,

South side: land of Dhaya Mula bearing survey no. 122 paiki.

After the sale transaction, the plaintiff constructed well in the respective land at his own cost in the year 1991, erected the pipelines and installed machines etc. With the help of the machine, the plaintiff is taking water for his adjacent land. The respective well is of independent ownership of the plaintiff. Previously, the plaintiff has filed RCS no. 48/2012 against the defendant no. 4 for declaration and permanent injunction that the respective defendant does not have any right to take water from the well or to put machine that has come in the purchased land of the plaintiff, The respective suit has been allowed in the favor of the plaintiff against the same, the appeal is pending. Again, the defendant no. 4 tried to take electric connection on the well of plaintiff's ownership and thus, the plaintiff filed RCS 54/2012 wherein temporary injunction application has been allowed in

the favor of the plaintiff. And the suit is pending. Due to the technicalities of law, the name of the plaintiff cannot be mutated on the revenue records of the rights. The plaintiff is in need of the electric connection on the respective well for agriculture purpose. For which he applied to the defendant no. 3 in the prescribed form on 4/8/2014 and sent the I-D proof and true copy of registered sale deed through R.P.A.D. as he refused to accept personally. The defendant no. 3 through his letter no. nsd/de/rev/esta/3960 dated 12/08/2014 in spite of producing the relevant documents, the defendant no. 3 refused for the electric connection stating the absence of the revenue records. The same act of the defendant no. 1 to 3 is against the provisions of the Electricity act and the principles of natural justice. The electricity company is bound to supply the electricity connection to the owner or occupier. The plaintiff is the owner and the possession is permissive. The electricity is necessity in today's life. Due to increased price of the diesel, the operation of machine is not feasible. The pillars have been fitted and that the electricity is being supplied to the adjacent owner. The plaintiff is ready to pay the legal charges. The land on which electric connection is sought is running under the name of the defendant no. 4 in the revenue records of rights and hence, the defendant no. 4 has been made party to the suit. Hence, the plaintiff has the prima facie case. As the pillars have been fitted and that the electricity is being provided to adjacent land, hence, the balance of convenience is also in favor of the plaintiff. Further, if the plaintiff is not given the electricity connection, he will not be able to take the produce from the agriculture and will have to incur extra expenses. In absence of the electricity connection, the plaintiff will have to suffer loss that cannot be compensated in terms of money affecting the civil and constitutional rights of the plaintiff and hence, the plaintiff will have to suffer irreparable loss. By preferring the present application, the plaintiff has prayed that the defendant no. 3 be ordered to provide electricity connection for agriculture purpose at disputed property by taking the appropriate fees. The plaintiff has produced various documents to prove his contention i.e. village form no. 8A, 7 and 12 of the disputed property, village form no. 8A, 7 and 12 of the land in the name of the plaintiff in the revenue records of rights, application preferred by the plaintiff to PGVCL for new connection, I-D card of the plaintiff, sale deed bearing registration no. 782 of 1990, acknowledgement

receipt, cover of PGVCL, letter of defendant no. 3 to the plaintiff (mark 3/1 to 3/14), plaint of RCS 54/2012, exhibit 5 and order passed under exhibit 5, plaint of RCS 48/2012, judgment of RCS 48/2012, decree of RCS 48/2012 (Mark 23/1 to 23/5), plaint of RCS 85/15 filed by present defendant no. 4, summons of RCS 85/2015 (mark 24/1 to 24/2). Drawing the attention of the Court towards the provision stated in Order 2 Rule 2 of Code of Civil Procedure and Section 43 of Electricity Act, to strengthen the arguments advanced, the Ld. Advocate for the plaintiff relies on following authorities –

- a) Indian Cable Company Limited versus Smt. Sumitra Chakraborty reported in AIR 1985 Calcutta pg. 248 wherein it has been held that Mandatory Injunction on interlocutory application can be granted even if it results in granting relief claimed in suit. In deserving cases, the Court should not hesitate to come in aid of a litigant and uphold the cause of justice by granting such a relief.
 - b) Abhimanyu Mazumdar versus Superintending Engineer and another reported in AIR 2011 Calcutta 64, wherein it has been held that “Person in settled possession of property be it trespasser, unauthorized encroacher, squatter of any premises, can apply for supply of electricity without consent of power, is entitled to get electricity and enjoy same until he is evicted by due process of law.
 - c) Chandu Khamaru versus Smt. Nayan Malik and others reported in AIR 2011 Supreme Court 2897 wherein Hon’ble Apex Court directed distribution licensee to make supply through another way and to follow provisions of section 67 (2) in case there is no other way.
 - d) Smt. Shakuna Kushwah versus Madhya Pradesh Kshetriya Vidhut Vitran Co. Ltd, Bhopal and others reported in AIR 2014 Madhya Pradesh 182 wherein it has been held that “Licensee is obliged to consider application by owner or occupier of premises for grant of connection...applicant residing in premises would be covered by definition of occupier”.
3. With the service of summons, the defendant 1 to 3 have appeared through their pleader and have filed their written statement vide exhibit 9, wherein

they have strenuously opposed the present application and have vehemently argued that the suit is barred by mis-joinder and non-joinder of parties. The head office of defendant no. 1, 2 and 3 i.e. Gujarat Urja Vikas Nigamis is not added as defendant. The present suit is not tenable against PGVCL. The present plaintiff had earlier preferred two suits vide RCS NO. 48/2012 and 54/2012, wherein RCS no. 48/2012 was decreed in favor of the present plaintiff and it was declared that the defendant does not have any right in the well of independent ownership of the plaintiff that has come on the land purchased by the plaintiff vide registered sale deed no. 782 dated 26/07/1990, disputed land bearing revenue survey no. 122 paiki and that the defendant does not have right to enter or disrupt in the possession of the plaintiff without following due process of law. In addition, the order of permanent injunction was passed against the defendant no. 4 with respect to taking of water from the well of independent ownership of the plaintiff and fitting of the pipeline. The appeal has been preferred in the respective suit against the decree passed and the same is pending. In the RCS no. 54/2012, the present suit filed against present defendant no. 1 to 4, wherein temporary injunction application has been partly allowed wherein the defendant no. 1 to 3 have been ordered not to provide electricity connection to the defendant no. 4 on the land admeasuring about 0.5 bigha, the land purchased by the plaintiff till the final disposal of the suit. Thenafter, the plaintiff has come with the present suit for the declaration that the plaintiff is entitled to get the electricity connection on the land purchased through registered sale deed/ on the well for agriculture purpose and that the defendant no. 1 to 3 are bound to provide the electricity connection to him and for the permanent injunction that the letter of the defendant no. 3 (produced vide mark 3/14) is against the provisions of the electricity act, 2003 and the principles of natural justice, and that the defendant no.3 to provide electricity connection to the plaintiff on payment of the appropriate fees for the agricultural purpose on the land bearing revenue survey no. 122 paiki . The plaintiff could have asked all the reliefs in the RCS 54/2012 that is not done. The defendant has denied that the plaintiff is a farmer in absence of any information. The ownership and possession of the disputed property there is no land and/or well in the name of the plaintiff in the revenue records of rights. There is no entry in the name of the plaintiff and neither the plaintiff has made any averment about

the same in the present plaint or temporary injunction application. The possession of the agriculture land can be proved by revenue records only. The revenue authority has the power to grant permission for the digging of the well, the use and the possession of the agriculture land. The Civil court does not have such jurisdiction. The plaintiff had sent application through post which cannot be accepted. The rules and the procedure of the GEB are to be followed. Only by sending application, no electricity connection can be provided. All revenue records are in the name of the defendant no. 4. There are dispute between the plaintiff and the defendant with respect to the ownership and the possession of the disputed property that can be decided after taking evidences only. The defendant no. 3 had applied for the electricity connection for agricultural purpose vides application no. 2964418 on the well in the survey no. 121 paiki of moje Mevasa. The defendant had submitted the certified copies of his election card, ration card, village form no. 6, village form no. 16, village form no. 8 A, village form no. 7 and 12, the caste certificate etc. After survey of the disputed land, the defendant no. 4 was given yadi of F.Q form quotation. He had fulfilled all the formalities. All the proceeding with respect to wiring on the land bearing survey no. 122 paiki was completed and the electricity polls were also erected. While the proceeding with respect to electricity supply was in progress, the present plaintiff filed RCS 54/2012. The plaintiff has waived off his right of the present relief as the same was not prayed in RCS 54/2012. The plaintiff has not completed the proceedings to get the electricity connection. And hence, the Ld. Advocate for the defendant no. 1 to 3 has requested to reject the present application.

4. With the service of the summons, the defendant no. 4 has appeared through his pleader and has submitted his written statement vide exhibit 17, wherein he has denied that the plaintiff has purchased the land bearing survey no. 122 paiki admeasuring about 0acre and 08 gunthas from his father vide any sale deed, that the plaintiff digged well, erected pipelines and installed machines. The present suit suffers from non-joinder of necessary party. The defendant admits about the RCS 48/2012 and 54/2012. The electricity connection of the defendant on the well that has come in the respective agriculture land was sanctioned and the proceeding with respect to providing

of the electricity was over but then the plaintiff filed the RCS no. 54/2012 that is pending at this juncture. As the plaintiff has not purchased the land bearing revenue survey no. 122 through sale deed, his name is not mutated on the revenue records of rights. The defendant no. 4 does not have any knowledge about the application preferred by the plaintiff for electricity connection and that he has denied that the defendant no. 3 denied for the electricity connection stating the reason that the plaintiff does not have the revenue records. The plaintiff does not cause to prefer the present suit. The agriculture land bearing revenue survey no. 122, paiki admeasuring about acre 0-08 gunthaa of village Mevasa has come in the name of the defendant and that a well of independent ownership has come in the respective land from the time of his father, the entry of the same is in the revenue records of the rights. The defendant no. 4 is the legal owner and in possession of the land bearing revenue survey no. 122 and that a well of the independent ownership has come in the respective land. The electricity connection was sanctioned to by the defendant no. 3 after following all rules. There is no other well of any other person in the land bearing survey no. 122 except the well of the defendant no. 4. If the plaintiff is given electricity connection without any revenue title, the defendant no. 4 will have to suffer. The suit with respect to the dispute of well is pending in the court. The plaintiff does not have any legal right in the land bearing revenue survey no. 122. There is no well of the ownership of the plaintiff. The defendant no. 4 has been given electricity connection on the disputed land. There is no irreparable loss in the favor of the plaintiff that cannot be compensated in terms of the money. The balance of the convenience is in the favor of the defendant no.4. Arguing the same, the Ld. Advocate for the defendant no. 4 has requested to reject the present application.

- 5 The plaintiff has filed his counter affidavit vide exhibit 20 wherein he has denied the averments of the written statement and has stated in addition that the cause of filling the suits RCS 48/2012, RCS 54/2012 and the present suit are different. At the time of filling the RCS 54/2012, there was no need of the electricity connection and hence, there was no need to ask for the present relief. The cause of the present suit came into existence when the electricity company refused to provide electricity connection with respect to

application dated 4/8/2014. In addition, the plaintiff has denied the defense taken by the defendants in their written statement.

6. While considering an application for injunction, it is well-settled that the courts would pass an order thereupon having regard to: (i) Prima facie (ii) Balance of convenience (iii) Irreparable injury. The Honorable Supreme Court has observed that the other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions are as : (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor ; (iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case- the relief being kept flexible; (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case; (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise."
7. Heard the Ld. Advocates appearing for the parties, read the application and perused the records of the Court. The plaintiff has preferred the present application for the mandatory injunction, to order the defendant no. 3 to provide to get the electricity connection for the agriculture purpose on the land bearing revenue survey no. 122 paiki to the plaintiff, on payment of the fees by the plaintiff. It is admitted that the previously, the plaintiff had filed two suits – 1) RCS 48/2012 wherein the Hon'ble Court was pleased to decree the suit in favor of the plaintiff wherein it was held that the defendant does not have any right in the well that is of independent ownership of the plaintiff in the land bearing survey no. 122 paiki . The defendant has filed an appeal against the same that is pending. 2) RCS 54/2012 wherein the Hon'ble Court allowed the temporary injunction application and restrained the defendant no. 3 from providing the electricity connection to the

defendant no. 4 on the well that has come in the land bearing purchased by the plaintiff till the final disposal of the suit. No appeal has been preferred against the present order. By preferring the present application on hand, the plaintiff has prayed that the defendant no. 4 be ordered to provide electricity connection for agricultural purpose in the land bearing revenue survey no. 122 paiki more specifically as described in para 2 of the respective application on payment of the appropriate fees. Further, it is also on record that the present defendant no. 4 has filed RCS 85/2015 for the declaration that the defendant (present plaintiff) does not have any right to have well in the land of the plaintiff (present defendant no. 4) that the act of the defendant to erect well in the land of the plaintiff are illegal and against constitution. Now, if the evidences produced by the present plaintiff are taken into consideration, the plaintiff has produced the copy of the registered sale deed produced vide mark 3/11. On perusal of the same, it is evident that the present defendant no. 4 has signed the respective document as witness. On plain reading of the respective document, it is evident that the father of the defendant no. 4 had sold the disputed land to the plaintiff for the purpose of erecting well only in the respective disputed property and that the disputed land was sold just for the purpose of the use of the well only. Though the defendant no. 4 has denied the sale of the disputed land to the plaintiff and has stated that the land bearing revenue survey no. 122 paiki admeasuring about the acre 0-08 gunthas has come in the name of the defendant no. 4 in the revenue records of rights and that there is entry of well (that has come from the time of his father) in the revenue records of rights in the land of the independent ownership of the plaintiff. Similarly, the defendant no. 1 to 3 have taken the defense that the ownership and possession of the disputed property is doubtful. The name of the plaintiff does not appear as owner in the revenue records of the rights. The ownership and the possession of the agriculture land can be proved only by revenue records. But it is well settled that an entry in revenue records does not confer title on a person whose name appears in the records of rights and that entries in the revenue records have only fiscal purpose i.e. payment of land revenue and no ownership is conferred on the basis of such entries. Thus, the defense taken by the defendants does not hold any ground at this juncture. Further, it is prima facie evident that the sale deed of the disputed land has been executed in the

favor of the plaintiff of the land bearing revenue survey no. 122 paiki admeasuring about acre 0-08 gunthas vide registered sale deed no. 782 dated 26/07/1990. There is no statement made by the defendant no. 4 that the respective registered sale deed has been challenged in the Court of law to declare the same void. The other argument advanced by the Ld. Advocate for the defendant no1, 2 and 3 is that the relief as prayed in the injunction application and the final relief is the same and thus, the same cannot be granted. In the case of Super Cassettes Industries Ltd versus Music Broadcast Pvt. Ltd on 3 May, 2012 the Hon'ble SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NOS.4196-4197 OF 2012 (Arising out of SLP(C)Nos.26581-26582 of 2011) the Bench consisting of Hon'ble Justice Altamas Kabir, Justice Surinder Singh Nijjarand Justice J. Chelameswar have held that "Even in matters under Order XXXIX Rules 1 and 2 and Section 151 of the Code of Civil Procedure, an interim relief granting the final relief should be given after exercise of great caution and in rare and exceptional cases." The other argument advanced by the defendants that the present application is with respect to mandatory injunction that cannot be granted at present on the basis of an interlocutory application. The Hon'ble Supreme Court of India has stated in the case of Dorab Cawasji Warden vs Coomi Sorab Warden & Ors on 13 February, 1990 (Equivalent citations: 1990 AIR 867, 1990 SCR (1) 332 , Author Hon'ble Justice L Sharma), (1) The courts can grant interlocutory mandatory injunction in certain special circumstances.

(2) The relief of interlocutory mandatory injunction is granted generally to preserve or restore the status quo of the last non- contested status which preceded the pending controversy until the final hearing when full relief may be granted. But since the granting or non-granting of such an injunction may cause great injustice or irreparable harm to one of the parties, the Courts have evolved certain guidelines.

(3) Generally stated, the guidelines are: (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction; (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money; (3) The balance of convenience is in favour of the one seeking such relief.

(4) Being essentially an equitable relief, the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances in each case.

The objections as stated by the defendant electricity company for not providing of the electricity connection to the plaintiff has been stated in the letter of the defendant company produced vide mark 3/14. On perusal of the same, the reasons as stated by the defendant company, the application for the electricity connection cannot be accepted when it is sent by post. For the electricity connection for the agricultural purpose, the applicant has to submit necessary details, evidences and revenue records before the office and get the registration done. Further, it is also stated in that letter that the plaintiff had come personally in the office of the company and he was informed about present rules of the company and about the evidences and the revenue records. The plaintiff can get the registration done by submitting the necessary evidences and the revenue records and the evidences. The authorities produced by the Ld. Advocate for the plaintiff specify that person in settled possession of the property be it trespasser , unauthorized encroacher, squatter of any premises can apply for supply of electricity without consent of the owner and is entitled to get the electricity connection and enjoy the same until he is evicted by due process of law. Thus, it can be said that electricity in today's time is a basic need. A normal person cannot be kept deprived of the same in absence of any plausible reason. When the revenue entries do not decide the title of the property, denying the application of the electricity in absence of the revenue records do not seem to be a satisfactory reason. On the basis of the discussion done above, it is prima facie Now, in the light of the discussion done above, the in the present case, it is prima facie proved that the plaintiff is the owner of the disputed property that was purchased by him from the father of the defendant no. 4 through a registered sale deed, the defendant no. 4 being the witness of the respective sale deed. It is also prima facie on the record that the respective sale deed has not been challenged in any Court of Law. It is also settled that the revenue entries do not decide the title of the property and are only for the fiscal purpose. The defendant no. 4 has not challenged the order passed in the temporary injunction application wherein the defendant no. 1 to 3 have

been restrained to provide the electricity connection to the defendant no. 4. Thus, the plaintiff has proved his prima facie case. With respect to the balance of convenience, if the plaintiff is not given the electricity connection on the disputed property, the plaintiff would not be able to take the agriculture produce. Further, the other side, the defendant no. 1 to 3 will not suffer any harm. Infact, it will get one more consumer, being a source of income. Further, it is the plaintiff who will have to suffer irreparable loss in case the present relief as prayed for is not granted as he will not be able to do his agriculture work properly and take the produce from the disputed land. Thus, on the basis of the discussion done above and most respectfully agreeing with the principles settled in the authorities produced by the plaintiff, following order is passed in the interest of the justice –

ORDER

The present application of the plaintiff vide exhibit 5 is hereby partly allowed.

The defendant no. 3 is hereby ordered to provide electricity connection for the agricultural purpose to the plaintiff on the land bearing revenue survey no. 122 paiki , the description of the same is as stated in the para 2 of the exhibit 5 application, on payment of the necessary fees till the final disposal of the suit.

No order as to costs.

Pronounced in open Court on this 13th day of August, in the year 2015.

Date – 13/08/2015

(Pujankumari Lakshman Das)

Addl. Civil Judge & JMFC, Jetpur.

Unique ID GJ01062.

