

GJSK030011182022



**In the Court of Principal Senior Civil Judge,
Sabarkantha @ Prantij**

Rathod Ikbalmiya Yakubmiya

...Plaintiff / Applicant

// Versus //

Rathod Imranmiya Usmanmiya

...Defendants / Opponents

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Appearance :

Ld. Adv. Mr. K. K. Soni appeared on behalf of the plaintiff.

Ld. Adv. Mr. Y. N. Raval appeared on behalf of the defendants.

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Order Below Exh. 5

In

Regular Civil Suit No. 23 / 2022

1. The present application at Exh. 5 has been filed for grant of interim injunction under Order-XXXIX, Rule 1, 2 and Section 151 of Code of Civil Procedure, 1908.
2. The applicant is the plaintiff and the opponents are the defendants and in order to avoid repetition they will be

mentioned as plaintiff and defendants respectively and the agricultural land bearing Survey No.826, Old Survey No.514/1 admeasuring 1-8-66 Heq.Are.Sq.Mtrs. situated at Prantij, Ta.: Prantij, Dist.: Sabarkantha will be mentioned as “*disputed land*”.

3. Facts of the present application in short are as under:

That the disputed land is jointly owned by the plaintiff and the defendants wherein plaintiff has 1/2 share and the defendants have 1/2 share. That the defendants have obstructed to the plaintiff to enter in the disputed land. That the defendants have stopped to give water from the bore. That the defendants have been constructing new road on the 1/2 share of the plaintiff hence plaintiff told the defendants that why are you constructing a new road on our land ? Our land is small and there is a canal next to it. Therefore, you should not create a new road right other then the legal road to your share of the land. A dispute arose between the plaintiff and the defendants regarding this matter. The defendant, who did not build a new road, stopped providing water from the borehole for irrigating in the plaintiff's land. The defendants threatened to the

plaintiff and filed a case against the plaintiff at the police station and the police took bail of the plaintiff. Hence, plaintiff has filed suit against the defendant. During the time that the suit is likely to take a long time, the defendants are likely to make a paved road in the plaintiff's land and if the plaintiff does not provide water from the well in his share of the land, he will not be able to get the produce from the plaintiff's land and if the land is divided into two part, the plaintiff will not be able to sale his share which will cause great loss and damage. There is a prima facie case of the plaintiff and balance of convenience is also in favour of the plaintiff and irreparable loss is also likely to be incurred by the plaintiff, while the defendants have no case. Hence, the plaintiff has filed the present application and prayed to grant the present application in favour of plaintiff and against the defendant.

4. This suit was registered on 11.04.2022 and summons were issued to the defendants. On serving of summons to the defendants, they gave their appearance through their learned advocate vide **Exh.8** (Vakalatnama). That the defendants have filed their written statement at **Exh.12** wherein they have

denied all the contentions of plaintiff's application and they have denied all the facts averred by the plaintiff in his plaint to be true, correct and admitted. After denying all facts of the plaintiff, the defendants have further stated, that, this suit is barred by non joinder of parties and mis joinder of parties. They have further stated that the names of the plaintiff and other heirs were entered as the heirs of the plaintiff's father who passed away in 1990 and the plaintiff and the defendant became the owners and occupants of half share in the disputed land. But the plaintiff and the defendants came to know that the plaintiff's name was deleted from the revenue record due to default, and for this, a correction application was filed and the defendants supported the plaintiff and again his name was entered in the revenue record as the owner of the half share in the disputed land for which entry No.18320 was mutated on 30/07/2018 and the plaintiff is also aware of. Further, they have stated that heirs of defendant Mahamadsalim Usmanmiya Rathod has taken electricity connection in his own private way by paying all the money himself and till date he has been paying the electricity bill. No one except Mahamadsalim Usmanmiya Rathod had any right

or authority in it. Mahamadsalim Usmanmiya Rathod passed away in the year 2016 and his heirs have been registered as heirs and his inheritance entry has been mutated vide entry No.17907. When the plaintiff needed water for farming, the defendant had provided the water and he had sold and charged less than the prevailing price. But the plaintiff deliberately did not joined heirs of Mahamadsalim Usmanmiya Rathod as parties. The disputed land is not distributed. The plaintiff has not even applied for a panchnama intentionally. There is only one survey number. Therefore, it is natural that the road should be at the same place from which people have been coming and going for years. There is no prima facie case of the plaintiff and balance of convenience is also not in favour of the plaintiff. There is no road except the disputed road. The defendants have been coming and going from the disputed road for years without any hindrance from anyone since the time of their forefathers and there is no other way except this. That the plaintiff has wanted to sale the disputed land but the defendants have not wanted to sale their share of the disputed land hence only to harass the defendants, the plaintiff has filed the present suit. Hence, injunction application filed by the

plaintiff should be rejected with costs.

5. On the basis of the pleadings of the parties the following issues have been arisen for the determination of the present application.

:: I S S U E S ::

1. Whether the plaintiff proves that there is a prima facie case?
 2. Whether the plaintiff proves that balance of convenience is in her favour?
 3. Whether the plaintiff proves that if interim relief as prayed for is not granted, it will cause harm which cannot be compensated in terms of money?
 4. What order?
6. For the reasons given herein, my reply to above issues is as under :-
 1. In the negative.
 2. In the negative.
 3. In the negative.
 4. As per final order.
 7. Issue Nos. 1 to 3 are discussed together in order to avoid repetition of facts and for convince of both the parties.
 8. I have heard the arguments on both the side.
 9. It is well settled principle of law that while issuing a temporary

injunction, the tests to be applied are (1) Whether the plaintiff has prima facie case? (2) Whether balance of convenience is in favour of the plaintiff? and (3) Whether the plaintiff would suffer any irreparable loss or injury?, if prayer for temporary injunction is not granted. It is also well settled that mere *prima facie* case by itself 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. If we see the provision contained in **Under Order-XXXIX, Rule-1 of Code of Civil Procedure it is as under:-**

Cases in which temporary injunction may be granted.-

Where in any suit it is proved by affidavit or otherwise-

(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 defraud his creditors, the Court may by order grant a temporary injunction to restrain

such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit; or until further orders.

10. Heard Ld. Advocate for the parties, read the present application and record. Ld. Advocate for the plaintiff has argued that if the defendants are not stopped, the plaintiff would suffer irreparable loss and as such plaintiff has prima facie case and factor like balance of convenience is also in favour of the plaintiff. So, his application for interim injunction should be granted.
11. Now, on perusal of present application as well as the plaint, it appears that the plaintiff has filed this application claiming that the defendants have been wrongfully constructed the disputed road in the share of the plaintiff. To support of his case, plaintiff has produced the documentary evidence vide Mark 4/1 to Mark 4/5 which are duly read and considered by this Court.
12. To support of the facts of written statements, the defendants have produced documentary evidence vide Mark 38/1 to Mark 38/12 which are duly read and considered by this Court.

13. That the plaintiff has produced his written arguments in support of injunction application vide Exh.19. While the defendants have produced their written arguments vide Exh.37.
14. To decide whether there is prima facie case or not, I deem it fit to peruse various documents produced by the plaintiff vide document list bearing Exh.4 and the documents produced by the defendants vide document list bearing Exh.38, considering the facts & documentary evidence of both the parties, plaintiff has prima facie failed to prove his facts. That the plaintiff has stated in his injunction application that the disputed land is jointly owned by the plaintiff and the defendants which is not distributed hence plaintiff has prima facie failed to show that the disputed land is distributed between the plaintiff and the defendants. When the disputed land is not distributed then injunction order on the disputed land cannot be given. Further, the plaintiff has not produced any documentary evidence which prima facie shows specific share of the plaintiff in disputed land. Further, considering the facts and documentary evidence, it prima facie shows that there is only one survey number hence it is natural that the road should be at the same place from

which people have been coming and going for years but without any cogent evidence exact location of the disputed road cannot be decided which cannot be decided at this stage. Hence, considering the above discussion, plaintiff failed to prove his facts. Even, if the relief prayed by the plaintiff is granted then it will cause more hardship to the defendant than to plaintiff. Plaintiff has not established that he will have to suffer irreparable loss which cannot be compensated in terms of money. Mere prima facie case would not help plaintiff to get interim injunction. Therefore considering the above discussions, the issue Nos. 1, 2 & 3 are answered in Negative and for issue No.4 following order is passed:-

:: ORDER ::

1. The application for temporary injunction is hereby rejected.
2. No order as to cost.

Signed and Pronounced in open Court on 3rd day of January, 2025.

Data : 03.01.2025
Place : Prantij

(Bhargavsinh Ravsinh Solanki)
(Judge Code No. GJ00919)
Principal Senior Civil Judge,
Sabarkantha at Prantij.

K_J_P