

GJSK140004982023



Presented on : 23-03-2023
Registered on : 23-03-2023
Decided on : 26-02-2024
Duration : 00 years 11 months 03 days

**IN THE COURT OF
PRINCIPAL CIVIL JUDGE & JMFC
AT VADALI, SABARKANTHA
Presided Over by S. Pal
RCS/4/2023**

Plaintiff: -

SHRAVANBHAI MAKHRAMBHAI VANZARA

Age: 58

Occupation: - Farming

**Residing at: - VASNA CHAVNI, TALUKA – VADALI, DISTRICT -
SABARKANTHA**

VERSUS

Defendants: -

KACHRAJI VALUJI THAKARDA

Age: 65

Occupation: - Farming

**Residing at: - VASNA, TALUKA – VADALI, DISTRICT -
SABARKANTHA**

Ld. Advocate for the Plaintiff: Shri V. B. TANK & R.N. PATEL;

Ld. Advocate for the Defendant: Shri S. V. PARMAR.

**Order Below Exhibit 5
(Delivered on 26-02-2024)**

1. This order is being passed in connection with an application for seeking temporary injunction & the same was filed along with the filing of original plaint at the earliest stage of this suit. After going through the

records particularly plaint, application filed under exhibit 5, written statement & other related documents the facts which came within the knowledge of this court can be narrated in brief by the following words.

2. The disputed property of this suit is an agricultural land which was belonged to the plaintiff. The description of such property is given below:

Old Survey No.	New Survey No.	Area	Situated at
1024	471	00 - 46 - 52 Sq. Mt.	Vasna, Taluka - Vadali

As per averment so made in the plaint this land originally belong to the defendant but through an agreement to sale (so written on Rs. 5/- stamp paper) the present plaintiff purchased such land from the defendant in lieu of Rs. 5351/- (rupees five thousand and fifty one only) & thereby he became the owner of such agricultural land. As per submission of the present plaintiff he has been cultivating and enjoying the ownership of such land from the last thirty years peacefully & without any intervention. As per plaint such land was surrounded by certain properties which descriptions are given below:

Northern side	Agricultural land so belongs to Gulabbhai
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	Jabrabhai Vanzara
Southern side	Land belongs to Shankarji Umedhji Thakarda
Eastern side	Land belongs to the defendant of this suit
Western side	Land belongs to Thakorbhia Hemabhai Vanzara

3. As per averment made in the plaint the present plaintiff there was an agreement to sale between the parties to this suit & the plaintiff has paid the entire amount in some installments. There was some issued relating to this disputed land. First of all such land was mortgaged with 'Mandli'. Apart from that in revenue records the name of the defendant was not entered by the way of succession. So the sale deed was not possible to be executed timely. But after removing all the difficulties the defendant has refused to execute registered sale deed. Therefore as mean of last resort the present plaintiff has field this suit with intention to seek declaration cum permanent injunction and also to abide the terms of agreement.

4. In connection of this suit the plaintiff has filed the following documents: -

Sr No.	Name of the documents	Dated	Marked as
1	Xerox copy of agreement to sale so made between the parties to this suit	11/06/1978	4/1
2	Copy of Gram Namuno no. 7 of	--	4/2

	old survey no. 261 & new survey no. 471		
3	Copy of 7/12 of the land (vide survey no. 261) in the year 1991	--	4/3
4	Total 4 affidavits of the witnesses of agreement to sale	20/03/2023	4/4
5	Total 2 affidavits of the neighbors	20/03/2023	4/5
6	Notice so received in connection with the case relating Land Graving	14/02/2023	4/6

5. In connection of this suit the defendant only filed his reply under exhibit 14 but he didn't file any documents.

6. Ld. Advocate of the plaintiff in his verbal argument has tried to establish his claims mainly by relying upon the documents filed along with the list of documents (vide exhibit no. 4) as well as the fact so made in both of his plaint as well as the application so filed for seeking temporary injunction. As per his submission the disputed property has been in the possession of the plaintiff from the last 30 years. Moreover such possession was made on the basis of an agreement to sale (vide marked as 4/1) so it cannot be presumed that present plaintiff has occupied the disputed property illegally. Apart from that he rightly filed the affidavits of attesting witness (vide marked as

4/5) who confirmed that plaintiff has paid the entire amount of sell price as well as they also confirmed the execution of sale deed. So prima-facie case is said to have been accrued in favour of the plaintiff.

7. On the other side Ld. Advocate of the defendant at the time of his argument denied the fact so mentioned in the plaint. Apart from that according to his submission the plaintiff has no law full possession on the disputed property. Moreover already a case has been registered against the plaintiff under land garbing. So there is no prima facie case sustained in favour of the plaintiff. So he argued to dismiss this application with cost.

8. Now in this connection following issues are required to be considered: -

I. Whether there is any prime face case occurred in favour of the plaintiffs?

II. Whether there is any irreparable loss or injury?

III. Whether there is any balance of convenience in favour of the plaintiffs?

IV. What order?

9. In connection with above mentioned issues the

findings of this court are given below: -

- I. Affirmative;
- II. Affirmative;
- III. Affirmative
- IV. As per final order.

// Reason //

10. **While considering the issue no.1: -**

while considering this issue this court has drawn a positive presumption. Because from the records as well as verbal submission of both sides one thing is clear that at present the disputed property is in the possession of the plaintiff. Moreover in support of his claim he rightly filed the four affidavits (vide marked as 5/4) of the attesting witness.

Moreover as per rulings of the Hon'ble Supreme Court of India & Hon'ble Allahabad High Court i.e., 1) ***Terene Traders Appellant v. Rameshchandra Jamnadas & Co. & others [AIR 1987 SC 1492]***, 2) ***Jagdish v. Rajendra [AIR 1975 Allahabad 395]*** it has been established that "while the plaintiff is in possession of the disputed property he can claim injunction". On the other side as per ruling of Hon'ble Gujarat High Court in ***Bharat Petroleum Corporation***

Ltd. v. Talaji Nagarpalika & others [Spl. C.A. No.

8026 of 2011] where it has been decided that court should protect the parties who is being forcibly dispossessed during the pendency of this suit.

So from the above discussion it can be presumed that a prima facie case exists in the favour of the plaintiff. Moreover in **Gujarat Electricity Board, Gandhinagar v. Maheshkumar & Co., Ahmadabad cited as [1995(5) SCC 545]** it was held: -

"Prima facie case means that the Court should be satisfied that there is a serious question to be tried, at the hearing, and there is a probability of Plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. "Prima facie case" is a substantial question raised bona fide which needs investigation and a decision on merits. The court at the initial stage, can't insist upon a full proof case warranting an eventual decree. If a fair question is raised for determination, it should be taken that a prima facie case is established. The real thing to be seen is that the Plaintiff's claim is not frivolous or vexatious.

Considering the above principle if we applied the same in this case then also we find a positive presumption while considering this issue.

11. **While considering the issue no.2 & 3: -**

For the convenience of our discussion issues famed under point no. (I) & (II) are being discussed together. After considering the above discussion now it is clear that a prima facie case lies in favour of the plaintiff then in these circumstances the balance of convenience is said to have been accrued in favour of the plaintiff. Moreover at this juncture if the injunction order is not granted then it will affect the present plaintiff for which he has to face injustice. So in this situation it can be concluded that plaintiff may likely be suffered irreparable loss & injury. In this context if we consider the judgment so passed by Hon'ble High Court of Gujarat in connection with **Ashokbhai Bhanushankar Trivedi v. Sikshan Samity [2000(2) G.L.H. (UJ - 6)** then we find that: -

"While considering the prayer for grant of temporary injunction or interim relief pending the suit, the court has to consider that the party praying for the same has made out prima facie case, that in case the interim relief as prayed for is not granted, it will result in causing irreparable injury to him which cannot be compensated in terms of money and lastly the balance of convenience also favours grant of the same. It is no more res integra that merely because the litigant praying for temporary injunction or interim relief has prima

facie case in his favour alone is not sufficient for grant of temporary injunction or interim relief unless on all the three aforesaid ingredients the court is satisfied and then only temporary injunction or interim relief as prayed for can be ordered, but not otherwise.

Now if we made an attempt to apply this principle then we find a positive response. Therefore from the above discussions now it is become clear that plaintiffs have successfully complied the essential requirements upon which he can claim the reliefs as sought through this application. So after having a brief discussion & considering all aspects related to it I'm passing the following order on 26th day of February, 2024 in open court.

ORDER

1. This application filed on behalf of the plaintiff is here by allowed;
2. The parties to this suit are hereby directed to maintain the status quo of the disputed property till the final disposal of this suit.
3. No order of cost & parties to this suit will have to bear their own cost.

Place: - Vadali

Date: - 26th day of February, 2024

(Sudipta Pal)

GJ01419

Principle Civil Judge

& J.M.F.C., Vadali.