
Order below Exhibit No. 5

Plaintiff has filed a present application for getting a temporary injunction under the provision of **Order 39, Rule 1, of the Code of Civil Procedure**. The facts of the case narrated in their pleadings by the parties are as under.

Plaintiff Version/case:-

- (1) According to the pleading of the temporary injunction application placed on the record as exhibit no. 5, plaintiff stated in her application that she has owner of the land situated in Sonarpada, Taluk Songadh of Tapi district having Land account no. 124, Block no. 66 Paiki 1, Old Condition ("juni Sharat") Survey no. 43 and 44, admeasuring of 0-42-00 Hec, Are, Sq. meters. We plaintiff purchased said land property by legally registering a sale deed bearing sale deed registration no. 1027/2009. Thereby we have been the owner and administrator of the suit land. Thus, we plaintiff, have been the possessor of the said suit land. Entry of the said suit land is made in revenue record vide entry no. 500.
 - (2) Thereafter, entry no. 521 in revenue record had been made certified of non-agriculture for the commercial purpose to establish Petrol pump and refreshment centre as per the section 65, 48, 81 of The Gujarat land revenue code.
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Thereafter entry no. 513 had been made certified to transfer the commercial purpose of said land from new condition to old condition. The plaintiff belongs to Gamit community while defendant belongs to Chaudhri community and both are husband-wife. The said land property acquired by me from self-earning money. We plaintiff having legally possesses, occupy, administer the said suit property.

- (3) The defendant of this case has been threatening, mentally and physically harassing me and still it is continue. The defendant keep doubt in his mind that plaintiff has illicit relation with other male person. The defendant is trying to grab the possession of the said land property from my possession. The defendant has made up entry in his name as copartner in the suit land property by entry no 560 in the revenue record by producing illegal false, fabricated and bogus documents which were made on 18/06/13 and 15/06/13. We plaintiff has never relinquish the right on suit land property, defendant has made it by false, fabricated consent letter. Thus wrongfully defendant made his entry in his name. Against the said entry we plaintiff filed RTS appeal vide bearing no. 106/14 in deputy collector of Tapi at Vyara and it was rejected. Further we filed RTS revision before the collector of tapi district at Vyara. We plaintiff also filed HMP in Vyara court for getting the divorce decree.

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- (4) We plaintiff, the affidavit for relinquish/wave the right on the property made on 18/06/13 and consent deed document inserting name of defendant in the said property made on 03/04/13, both were made void by making affidavit made on 06/04/15. These two documents namely affidavit for relinquish the right on property and consent deed for inserting defendant name in the said suit property had been made by me under the threat, by emotional blackmailing me. Both documents were neither given to me read nor made me read. The defendant has taken my signature on those two documents before notary against my will and coercively.
- (5) The plaintiff filed the this suit, for the declaration of the null and void documents of affidavit which has executed for relinquish the right and consent letter for inserting defendant name as copartner which were made on 18/06/13 before the sudharm v. Pagar notary vide serial no. 1975/13 and on 03/04/13 before the sudharm v. pagar notary vide serial no. 912/13. Moreover, defendant has no right on the ved-abhishek petrol pump as well as in its business, occupancy, administration.
- (6) If this temporary injunction would not be granted in favour of plaintiff, it would be much hardship towards plaintiff which would not be compensate in terms of money. We plaintiff has prima facie case against defendant. The balance of convenience is in our favour. If
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the injunction would be granted there would be no serious hardship and no severe loss to the defendant. Thus plaintiff pray for seeking injunction against the present defendant not to enter, to interrupt, to restrict, to disturb our plaintiff possession on the said land property as well as in ved-abhishek petrol pump business, occupancy, possession by him or by his wrongdoer or black guard.

Defendant's Version/case:-

- (7) The court issued a show cause notice to defendants, notice served to all the defendants. Defendant remained present in this suit by his attorney/advocate/representative. As defendants came on record matter was on the stage to file written statement / reply regarding this suit as well as temporary injunction application. The defendant has filed his W.S./Reply on this temporary injunction application. The Defendants has appeared through Ld. Lawyer **Mr Yogesh Tiwari** and he has filed **Written Statement/Reply vide Exhibit No. 14**, wherein they have denied most of facts of plaintiff's case. Brief facts of WS/Reply are as under.
- (8) In his written Statement/Reply defendant stated that plaintiff has no right to file this suit against us. By creating wrongful proceedings and chapters, it is merely for giving us mentally tress, trauma, harassment. Hence, this suit is not tenable at this stage. We have not made any

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suppression of facts in any proceedings.

(9) Moreover, Defendant stated that suit was filed by plaintiff on 03/07/15 and thereafter on 06/11/15 plaintiff executed the mandate for the purpose of administering disputed petrol pump along with photo and Id proof before the Mr. Suresh P. notary of Songadh. So, on this count the present application is not tenable.

(10) In addition to that, defendant stated, in para 5 of his reply, that the plaintiff in its suit para no. 1, 2, 3, 4 shown the facts is placed on the record. But in the said land property we defendant has right is false, we strongly refuse that facts. We also deny the facts stated by plaintiff about two documents affidavit and consent letter were made by adopting breach of trust on 18/06/13 and 15/06/13 and were bogus, false, fabricated. The Plaintiff is expert in creating various types of legal proceedings and chapter and is habitual of change her mind frequently.

(11) The defendant in his reply state that plaintiff's para no. 5, 6 stated wrong facts. That is why we deny it. Looking to the market price of the suit property, this court has no right to decide the said suit as well as present application. This court has jurisdictional bar regarding this suit. The Plaintiff's suit is without cause of action on that count this suit and present application too is not tenable. Whatever the relief sought by the plaintiff is not to be considered as eligible to grant relief in her favour.

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(12) The plaintiff is well educated woman and she has studied till **BSC Home Science**. Hence if it is the version of the plaintiff that all signatures of the plaintiff taken under the threat and under impression of black cloud of doubt and by making bogus, fabricated false document of affidavit and consent letter, then it is not convincing and believable. Moreover, defendant in his para no. 12 of his reply stated that in a suit filed under Hindu marriage act for getting divorce by the plaintiff in Vyara court, stated whatever facts is against the law and completely opposite facts is shown there.

(13) The defendant in his para no. 13 stated that as to the real facts, there were love relation between plaintiff and defendant. Therefore, they married on 26/07/1996 and were passing the marriage life well. From this marriage life we had blessed with two kids, one son and one daughter namely, Abhishek and Vaidehi, due to the sound condition of our family our marriage life was going well. We had having good agricultural land as well as husbandry, had having more than 100 cows and raised it. In this husbandry my wife, plaintiff also been helpful me. In addition to this for milking the cows i hired a one man name bhagvanbhai Karshanbhai Rabari with others. Due to the busy schedule of my routine life, I could not give time to husbandry. During this time in the background of this the relation between my wife and bhagvanbhai

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karshanbhai rabari was established. But we never put doubt on my wife and never created doubt on my wife and other servants. But in the result of above said illicit relation my wife and bhagvanbhai karshanbhai rabari both were ran away together on 15/09/12 along with huge amount of money and ornaments. When i was coming back from work to home my father in law vanabhai muljibhai gamit informed me by phone that “smita is not at home”. I went home and checked home but she was not there. At the end one of the person from hiring for husbandry namely vanabhai nagjibhai rabari told me that “sumitaben has gone with bhagvanbhai karshanbhai rabari with two more unknown persons in Toofan car. According to my belief and opinion that he has kidnapped my wife, i complained in kakrapar police station first crime register no. 25/2012. Thereafter i had known that she had illicit relation with bhagvanbhai karshanbhai rabari. After adopting legally procedure and getting back my wife, at that time she told me that he had raped on me and due to that i became pregnant. During that time my wife was kept in Nari sanrakshan gruh Palanpur. Looking and considering all the incidents, with pure and generous heart and forgetting the past, without any condition to my wife still i was ready to keep my wife with me. But after all of this my wife went her father house. But plaintiff and her father’s weak financial condition i made them available

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the land for petrol pump dealership of Indian Oil Corporation on 29/05/2004 in the quota of ST woman reserve in Songadh taluka. All the financial expenses done by me defendant. The said petrol pump running in her name, same advantage she took and file this false suit along with false present application against me.

(14) The defendant has stated in page no. 7 of his reply that after adopting all legally procedure plaintiff willfully and to win the faith of the defendant whatever was done in the past, executed consent letter and affidavit in my favour. It that deeds she had given us in written that she had no income and property. She added that she is dependent on my income. Due to run away my wife and bhagvanbhai karshanbhai rabari, he would have taken some drafting in writing from my wife. In result of the said incident no any proceeding on petrol pump would arise that's why she gave me consent in writing through consent letter and affidavit for relinquish the right. After adopting all legal proceeding plaintiff's name is struck out.

(15) Thus plaintiff, willingly steps taken of desertion and left me alone along with sons and stay with her father. Now the plaintiff has bad intention because of having her name in the business, administration on petrol pump this suit and such type of application has filed.

(16) The defendant stated in his page no. 8, para no. 14 that thus upon the wrong statement wherein she is expert, it

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disclosed that after living with another male partner, made her pregnant by bhagvanbhai karshanbhai rabari, giving me in writing, and we had lived together. But still she was not ready to file complaint against bhagvanbhai karshanbhai gamit, upon that it is my belief that she is trying to grab the petrol pump from me. Purpose behind the creating this proceeding is to play luck on me.

(17) Finally defendant stated prayed for Plaintiff has not prima facie case. Plaintiff has no irreparable loss if this injunction application would not be granted. Moreover plaintiff has also not having balance of convenience in comparison to defendant. Hence, this application is liable to straight way rejected with imposing heavy exemplary cost.

(18) The plaintiff has filed counter affidavit in the suit placed on the record at exhibit no. 25 of date 01/09/17. In the counter affidavit most of the facts are derived from the plaintiff's suit and stated those facts again. So, for clarity and brevity, and for the sake of non-repetition of facts, it is not narrated again here. No any new facts has come on the record. Moreover, in the counter affidavit merely denial of the facts shown in the Written statement of defendant.

(19) Plaintiff has adduced documentary evidence along with temporary injunction application as below.

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Here, in the suit, plaintiff has filed the documentary evidence placed on the record at **Mark no. 3/1 to 3/29, 46/1 to 46/5**. All the document has been considered while deciding the present injunction application.

(20) Other side Defendant has adduced documentary evidence along with his Written Statement/Reply as below.

Here, in the suit, defendant has filed the documentary evidence placed on the record at **Mark no. 15/1 to 15/4, Mark no. 32/1 to 3/39, Mark 40/1 to 40/3, Mark 51/1 to 51/20**. All the document has been considered while deciding the present injunction application.

(21) Plaintiff side Advocate **N.S. Prathan** has filed the written argument by **Exhibit No. 37**. This court has gone through that argument and substance of the argued they have done. Other side Defendant Advocate **Mr Yogesh Tiwari** for the plaintiff had filed the written argument by **Exhibit No. 39**. This court has gone through that argument and substance of the argued they have done.

(22) For the decision of Temporary Injunction application, the following issues are emerged on the record before this court.

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- (1) Whether plaintiff proves that he/ she has Prima facie case for getting Temporary injunction in his favour?
 - (2) Whether plaintiff proves that he/she has balance of convenience in his/her favour?
 - (3) Whether plaintiff proves that he/she would have irreparable loss if temporary injunction would not be granted in his favour?
 - (4) What order?

(7) In respect of the above issues after looking to the evidence I pass the above issues decision as

Issue No. 1 - Negative

Issue No. 2 - Negative

Issue No. 3 - Negative

Issue No. 4 - As per the final order.

(23) Discussion & Findings:-

(23.1) The **Order 39, Rule 1 of in The Code of Civil Procedure**, provide provision for the granting temporary injunction. The Court can grant temporary injunction, when (1) any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of decree; (2) the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors; (3) the defendants threatens to

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dispossess the plaintiff or otherwise causes injury to the plaintiff in relation to any property in dispute in the suit. In above said cases, the Court may grant an injunction to restrain such acts or may make any other order staying or preventing the wasting, damaging, alienation, sale, removal or dispossession of the property or dispossession of plaintiff or causing injury. Even Court may grant injunction for other injury of any kind, which defendant is committing or going to commit such injury.

(23.2) There are three elements the court has to see and evaluate at the time of deciding a temporary injunction application. The court has to take into consideration (1) **Prima Facie case** in his favour (2) **Balance of convenience** (3) **Irreparable loss**. These three elements court should take into consideration while deciding the application. In this application, all issues are connected with each other along with the facts of the case. So, I give findings regarding all issues jointly as under.

(23.3) It is settled law that at the threshold, the plaintiff must make out his prima facie case to entitle a plaintiff for obtaining a temporary injunction. Moreover, the court should be satisfied that at the trial of the suit the facts before it, seems that there is a probability that the plaintiff is entitled to get relief as sought for. Plaintiff has to satisfy that the alleged legal injury pleaded in temporary injunction application is well founded.

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(23.4) Following pleadings and documents are taken in to consideration which deciding this application. Application for seeking interim injunction placed on **exhibit no. 5**, Document Evidence list adduced by plaintiff placed on the record at Mark no. **Mark no. 3/1 to 3/29, 46/1 to 46/5**, Written statement filed by defendant placed on the record at **Exhibit no. 14**, counter affidavit placed on the record at **Exhibit no. 26**, Document Evidence list adduced by defendant placed on the record at **Mark no. 32/1 to 3/39, Mark 40/1 to 40/3, Mark 51/1 to 51/20**, Written argument moved by plaintiff placed on the record at **Exhibit no. 37**, Written argument moved by defendant placed on the record at **Exhibit no. 39**.

(23.5) Before going to facts and documentary evidence, it is necessary to narrate the particulars of the documents which are less concerned with disputed suit land. Hence, simultaneously, those all documents' particulars stated here once. Because there is no need to describe it again while discussing the facts of the case hereinbelow.

(23.6) Firstly, plaintiff and defendant were husband-wife there is no dispute in it. At present they lived separately after getting divorce decree from the senior civil court, Vyara. A divorce decree is placed on the record at **Mark no. 46/1**. This documents only help to consider the facts that they both parties divorced. Decree of divorced is drawn also drawn and placed on the record at **Mark no. 46/2** nothing else. Further, letter of Indian Oil Corporation limited for dealership of petrol pump letter of intent dated 01/10/2004. This

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documents just only help to deem that there is a dealership in the name of Chaudhari Smitaben Nitinbhai of Indian Oil Corporation limited is placed on the record at **Mark no. 46/4, 51/5**. Further, Marriage declaration deed dated 26/07/96 is placed on the record at **Mark no. 51/1**. Only for deeming marriage. Further, Plaintiff adduced **Mark 3/10, 3/11** which having entry no. 426, 500 accordingly for burden/loan (“bojo”) on the said disputed property.

(23.7) Secondly, Moreover, the following documents adduced by the defendant are no concerned while deciding present injunction application. Plaintiff’s Result of BSC Home science result is placed on the record at **Mark no. 51/2**. Birth certificate of Abhishek and Vaidehi placed on the record at **Mark 51/3, 51/4** accordingly. Application of Retail outlet dealership application in the name of Plaintiff dated 26/06/2004 is placed on the record at **Mark no. 51/4**. Complaint filed by the defendant about kidnapping of plaintiff in Kakrapal police station is placed on the record at **Mark no. 51/12**. Copy of Notice issue to Bhagvanbhai Karshanbhai Rabari in this regard in cr.m.a. No. 52/13, Letter about plaintiff stay at Nari sansarkshan Gruh, by court is placed on the record at **Mark no. 51/13**. There are many more documents are adduced by the both parties which is no concern about this present dispute. Hence, this court deems not to quote here. Whatever the documents is having concern about present dispute will be discussed finely hereinbelow.

(23.8) Now come to main dispute of the case. As plaintiff

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stated in her application of ex 5, that she is the owner of the property. For support of her say, she adduced the sale deed copy purchased in the name of Plaintiff from revaben widow of ravjibhai kimlabhai dhodiya and 8 others which is placed on the record at Mark 3/12. Upon perusing this documents it deems that said disputed petrol pump land property was purchased in the name of plaintiff smitaben nitinbhai chaudhari against consideration amount of 5,04,000/- File lakh four thousand only from revaben widow of ravjibhai k dhodiya and 8 others. So it is believed that she is owner of the said disputed land property at present. Thus, on this count of fact plaintiff succeeded.

(23.9) In addition to that plaintiff say, in her application that Entry no. 521 in revenue record had been made certified of non-agriculture for the commercial purpose to establish Petrol pump and refreshment centre as per the section 65, 48, 81 of The Gujarat land revenue code. Thereafter entry no. 513 had been made certified to transfer the commercial purpose of said land from new condition to old condition. The plaintiff belongs to Gamit community while defendant belongs to Chaudhri community and both are husband-wife. The said land property acquired by me from self-earning money. We plaintiff having legally possesses, occupy, administer the said suit property. Here, in support of above averments plaintiff adduced the revenue record copy of village for no. 6 which is having the entry on 513 and having the detail that applicant has obtained the permission to change of purpose from old condition to new condition

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and she has paid 80 % of premium and it shown the status of 15/02/2011. Moreover a revenue record village form no. 6 placed on the record at mark no. 3/8. Upon perusing this document, it is shown that permission for non-agriculture land was obtained by applicant with condition few conditions and said entry no 521 note on 26/2/2010 and shown status of 15/02/2011. Thus, on this count of fact plaintiff succeeded.

(23.10) Further, upon the record it seems that, as per the both parties version no dispute about legal formalities for obtaining necessary documents for running the petrol pump. As per the say of plaintiff version that said petrol pump established for the period of 30 years and running and carrying business under the head of vaid-abhishek petroleum. Other side defendant has not raised about this facts. Hence, with believing that this facts if admitted to other side party. So, regarding that fact to there is no need to elaborate the discussion.

(23.11) Now comes on the truly disputed two documents which was executed by plaintiff towards defendant. First was the affidavit for relinquish/wave the right on the property made on 18/06/13 and consent deed document inserting name of defendant in the said property made on 03/04/13, both were made void by making affidavit made on 06/04/15. These two documents namely affidavit for relinquish the right on property and consent deed for inserting defendant name in the said suit property had been made by me under

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the threat, by emotional blackmailing me. Both documents were neither given to me read nor made me read. The defendant has taken my signature on those two documents before notary against my will and coercively.

(23.12) Both documents are placed on the record at Mark 32/35, 32/36 accordingly.

Firstly, we discuss on consent letter of mark 32/35. It is on the stamp paper of Rs. 100/- and it contains five pages with photographs. This consent letter is notarized register vide register no. 912/13 dated 03/04/13 before the notary Sudharm V. Pagar. By perusing this document it is clear that consent agreement was made between plaintiff and defendant. Plaintiff gave clear consent in favour of defendant about doing particular acts' authority. It is written in her affidavit on page no 3, last para, plaintiff gave crystal clear consent towards defendant to insert defendant name as copartner in the said land property of block no. 66 paiki 1 of sonarpada. But as per the say of plaintiff, the point is here that whether that consent letter given by the plaintiff to defendant is taken by wrongfully. Now, once the consent letter was on legal and valid stamp paper, it is notarized, it contains both parties signature with photos then plaintiff can not take stand that it was executed by me under threat, against her will, and coercively. If it deems it, then it would amount to put the act of notary in to question. Notary always ask to both parties about content of the document thereafter notary register that document. This court does not believe that said consent letter was executed under

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influence, against her will, coercively by plaintiff. Regarding this consent letter, plaintiff made another affidavit on 06/04/15 placed on the record at Mark no. 3/16. Upon perusing this affidavit, it shows that plaintiff sumitaben revoke consent letter which was executed by her in favour of defendant and placed at Mark no. 32/35.

Now, Secondly, we discuss on affidavit of mark 32/36. It is on the stamp paper of Rs. 20/- and it contains three pages with photographs. This affidavit for strike out plaintiff name from said disputed land property is notarized register vide register no. 1975/13 dated 18/06/13 before the notary Sudharm V. Pagar. By perusing this document it is clear that affidavit was made between plaintiff and defendant. Plaintiff gave clear consent in favour of defendant about doing particular acts' authority. It is written in her affidavit on page no 2, plaintiff gave crystal clear consent towards defendant and strike out/ delete her name in the said land property of block no. 66 paiki 1 of sonarpada. But as per the say of plaintiff, the point is here that whether that affidavit given by the plaintiff to defendant is taken by wrongfully. Now, once the affidavit for deleting the plaintiff name was on legal and valid stamp paper, it is notarized, it contains both parties signature with photos then plaintiff can not take stand that it was executed by me under threat, against her will, and coercively. If it deems, then, likewise in above mentioned paragraph finding, it would amount to put the act of notary in to question. Notary always ask to both parties about content of the document thereafter notary register that document. This court does not believe that said consent

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letter was executed under influence, against her will, coercively by plaintiff. Regarding this affidavit, plaintiff made another affidavit for revoking prior affidavit on 06/04/15 placed on the record at Mark no. 3/17. Upon perusing this affidavit, it shows that plaintiff sumitaben revoke affidavit which was executed by her in favour of defendant and placed at Mark no. 32/36.

(23.13) But prior both documents at mark 32/35 and 32/36 once executed and upon base of that document whatever acts, proceedings initiated by defendant, applied for entry and inserting his name in to the record of rights, everything deems in natural course and legal way. Thereafter if plaintiff made two affidavit revoking the prior to documents having no effect to those prior documents, on which defendant have done acts. It legal and valid.

(23.14) Moreover, it is also make clear that when we see the entry no. 560 in the revenue record for inserting defendant name as copartner in to the said land property. That entry was made on 07/05/13 means after consent letter from the plaintiff and before the revocation of the consent letter by affidavit.

Likewise, above finding it is also make clear that when we see the entry no. 563 in the revenue record for strike out/delete plaintiff name in to the said land property. That entry was made on 25/06/2013 means after consent letter from the plaintiff and before the revocation of the consent letter by affidavit. So it is believed that

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for inserting his name in to the revenue records and deleting plaintiff name from the revenue records both were legal, and valid entry.

(23.15) Moreover, by making these two affidavits at Mark No. 3/16 and 3/17 in later stage would not revoke prior consent letter, and affidavit at Mark 32/35, 32/36 which were legally and duly executed. In short making affidavit for revoke of affidavit it's not a legal concept. In addition to this whatever stated Plaintiff in her version about against her will, coercively, under the threat, by adopting wrongful way consent letter and affidavit Mark 32/35, 32/36 was executed by me, is the case of plaintiff but looking to the pray of present application, there is no pray for declaring it null and void. It is matter of evidence and it would be known after evaluating the all oral and documentary evidence. So, here there is no need to elaborate on this count.

(23.16) Defendant in her present application pray for only two relief, one is not to restrict, obstruct herself in administering, carrying business of petrol pump, and second is not to sale this disputed land property.

(23.17) Regarding the first pray, once as discussed above and evaluating the documents validity before evidence, the name in the disputed land is of defendant. So at present he is the owner of the disputed land and in the record of rights defendant have his name too. An affidavit placed on record at mark 3/13 is executed by plaintiff to

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IOCL about technical defect in to the construction wall on 25/03/13. At that time plaintiff was the owner of the said disputed petrol pump. But thereafter she relinquished her rights into defendant.

(23.18) Apart from this two disputed documents, now we will discuss about two disputed entry on disputed land, entry no 560 and 563, after executing two disputed above mentioned documents, firstly, plaintiff insert his name in the record of rights in the disputed land at entry no. 560 on 07/05/13. Said entry for inserting defendant's name on the record in disputed land. As this entry was allowed by Mamlatdar. Plaintiff had filed RTS appeal vide no. RTS appeal no. 106/14 to cancel the entry no. 560 and 563 by which defendant insert his name in the said disputed land property but, same was rejected on 27/04/15 and order about entry no. 560 and 563 is held proper and made entry in revenue record by entry no. 640 which was placed at mark 51/7. Being aggrieved of that order plaintiff had filed RTS revision before the Collector of tapi district vide RTS Revision no. 28/15. Same was rejected by collector of tapi. Again being aggrieved of the ordered by collector plaintiff had filed SSRD (Special Secretary Revenue Department). Entry no. 724 (about interim order), 747 (about remand order to collector of tapi) had been made about those two disputed entry no. 560, 563. Resultantly, matter was remanded to collector, Tapi by vide remand case no. RTS/REMAND CASE NO.1/VASHI 4325 TO 4331/2020. Thereby plaintiff name was inserted with condition to binding whatever the order would be in the R.C.S. No. 41/15.

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(23.19) So, in a nutshell, Plaintiff had not succeeded in those revenue matters and finally order of this suit will be bound to both the party. Here, plaintiff stand on the back foot in those revenue chapters.

(23.20) Another very important fact factor is income. Now we are going to discuss about version as plaintiff said in her plaint that same disputed land property was purchased in my name by self-earning income. When we contemplate this fact very minutely and carefully, other side defendant has stated that she had no income. She was dependent of mine. She never earned. Perusing both parties fact and going through all documentary evidence at this stage. First of all, if the said disputed land property was self-earned and self-acquired then plaintiff should have disclose the source of income, how they acquired such big amount to purchase this property. On this count plaintiff totally failed to establish that the said disputed land property was self-acquired. Moreover, as important as last line finding, here in Mark no. 15/4, it contains that business in the name of vaid Abhishek petrol pump having the bank account no. 254120110000037 and plaintiff had given mandate to defendant about administering power and in that she has no objection. Point to be consider in this affidavit is date. The said affidavit was executed on 6/11/15 and suit was filed by plaintiff before this date, on 03/07/15. Here, in very shortly narrate the facts of two disputed document one was consent letter and affidavit both are placed on the record at mark 32/35 and 32/36. In

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 Mark 32/35, on page no. 3 para no. 2, 3 from upper side, firstly, in para 2, declared that plaintiff has no income and she is totally dependent on defendant, secondly, in para 3, declared on oath that the said disputed land property was purchased by defendant in my name. Thus, this second party has full legal right and share in this property. Another as important as above, in Mark 32/36 affidavit plaintiff stated in page no. 2, para no. 2, that said disputed land has been having in jointly and defendant does the administration of that land. As this court held above that both two documents are legally valid stamp paper, notarized, and having both parties signature with photos and consent letter having witnesses too. Thus the version of plaintiff that she acquired the said disputed land property in her name by self-income is completely false.

Authorities produced by the parties:-

The following authorities are presented in the case by the defendant.

<u>Sr.</u>	<u>Authorities/Parties</u>	<u>Citation</u>
1	Shyam sel and power limited and another vs shyam steel industries limited	Civil appeal no. 1984 of 2022.
2	Behram Tejani & ors vs azeem jagani	Civil appeal no. 150/2017.
3	Andra Pradesh high court authority	cma no. 294 of 2021.
4	K ravi Prasad reddy vs g giridhar	Civil miscellaneous appeal no. 43, 45/2021. Dod 25/01/2022.

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(23.21) Defendant has produced the abovementioned citation taken into consideration. Whatever is held by the various Honourable high court and honourable Supreme Court are applicable to this case up to some extent. It would be directive also to this court.

(23.22) So far as the said disputed land is concerned, herein, plaintiff has failed to prove her possession over disputed property and even she has failed to show that she is sole owner of disputed property and as discussed herein above, plaintiff has not come with clean hands, therefore, considering the same, plaintiff has failed to show her prima facie case and therefore, this court gives reply as to point No.1 in negative.

(23.23) So, out of above all material facts, so far as suit property is concerned and facts put up by the plaintiff it can be said that material facts have been suppressed by the plaintiff and it is settled law that pray to have relief of temporary injunction, one has to come with clean hands before the Court and equity demands equity. Herein, the plaintiff has suppressed material facts before the Court and on that count plaintiff is not entitled to have any relief and even otherwise,

(23.24) Herein, plaintiff has failed to prove her prima facie case and when she has not prima facie case therefore, if temporary injunction as prayed is not granted, then plaintiff would not suffer

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any irreparable loss and therefore, this court reply as to point No.2 in negative.

(23.25) As discussed herein above, plaintiff has not any prima facie case and therefore, not granting temporary injunction would not amount to suffering more inconveniency to plaintiff, therefore, my reply in respect of point No.3 is also in negative.

(23.26) As plaintiff has failed to show her **Prima Facie Case** at this stage so, no **Irreparable Loss** will cause to him and if plaintiff will prove later stage that defendant no.1 has encroached in his land then he will definitely get vacant possession of said land from the defendant no.1. So as per above discussion I am of view that plaintiff failed to show that **Irreparable Loss** will cause if defendant will not be restrained. Hence, I give answer of this issue in negative.

(23.27) Hence, as discussed above plaintiff has failed to **Prove Prima Facie Case, Balance of Convenience** in his favour and **Irreparable Loss** apprehended to him she is not entitled to get relief claimed by him.

(23.28) Eventually, thus, upon perusing pleadings of both parties, all documentary evidence adduced by the parties, written statement/reply, while the plaintiff has failed to prove that the defendants has no right in said disputed land property, plaintiff is not entitled to get the temporary injunction against the defendants.

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Conclusion:-

(23.29) Finally, thus, upon perusing the present injunction application, pleadings, written statement/reply and all documentary evidences adduced by the parties, in view of aforesaid discussion and evaluation, as i deem fit, just and proper, I pass the following order.

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:-ORDER:-
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1. The present temporary injunction application is hereby rejected.
2. No order as to cost.

Date: **26/07/2023.**

Place: Songadh.

(A. M. PATADIA)
Principal Civil Judge & J.M.F.C.
Songadh.