

Order below Exhibit - 5

- (1) The plaintiff filled this suit for Declaration and permanent injunction against defendants and also filed application by the plaintiff for seeking temporary injunction under Order-39, Rule-1 & 2 of the Code of Civil Procedure, 1908 and prayed for (a) To grant an ad-interim injunction restraining the defendants jointly and severally by themselves agents, or any other person acting under them from entering, encroachment or carrying out any demarcation or other activities on the said land, pending the final disposal of suit (b) To Grant stay order on the operation of the letter dated 21/01/2025 till the disposal of suit and Direct the defendant to not to enter the suit land and (c) Restrain the defendants from dispossessing the plaintiff from the said land in any manner whatsoever without due process of Law.(d) pass any other order or relief as this court may deem fit and proper in the interest of justice.
- (2) The summons/notice were issued against the defendant's and they were served to the defendant. The defendant has appeared before the court through an Advocate. The plaintiff has filed documents vide mark-3/1 to 3/16 and mark-23/1 mark-25/1 along with suit and injunction application. The defendant No.01 has filed his written statement vide exhibit-16. while defendants No.02 and 03 adopted written statement filled by defendant no,01 through adoption pursis vide Exh.18 The defendant has produced documents vide mark-17/1, to mark-17/06 The Plaintiff has also filed written summary of his arguments vide exhibit-21 on other side defendants advocate submitted oral argument in support of his written statement.
- (3) Heard the Ld. Adv. for the Plaintiff He has argued as per the application for temporary injunction. He further contended that he has establish his prima facie case through documentary evidence and establish relevance of each documents, the plaintiff submit copy of current 7/12 of the land belonging to the plaintiff the documents contains a clear insertion that the land of survey no,268/8/paikee 2 (new survey no.3293) is on the name of

the plaintiff and the area of the land is 2428 Sq.Mtrs. respectively, he further submitted that the document mark as 3/4 the current 7/12 of defendants land which contain the area of the land as 3453 Sq.Mtrs. and both the above documents has not been objected and hence the same can be taken face value to the extent of their relevance, further contended that the impugned map marked as 3/9 had come to be prepared after the order of the Hon'ble High court to measure the land belonging to the plaintiff and give it proper marking accordingly the map was prepared and looking to the map it become very clear that lands of the plaintiff and the defendants are adjacent to each other and also provides that the land of the defendant is having an area 3410 Sq. Mtrs. besides the map further clarifies that the area marked with horizontal lines are in the possession of the plaintiff which contains the area 1945 Sq.Mtrs. moreover it is although very much important to note that the said area marked with horizontal lines is to the left side of the defendants land and is adjacent to it, the map further classified that the area marked with horizontal lines and the defendants land have a permanent wall in between which is described as "b" "c" in the map which is explicitly separates two adjacent lands. He further contended that the documents marked as 3/12 clarifies that the defendants are intending to demarcate the defendants land to the extent of 5261 Sq.Mtrs. which is more than the area of the defendant's land which is 3410 sq.Mtrs. the impugned letter further speak that the defendants want to demarcate their area to the extent of 5261 by entering in the area shown with horizontal lines in the map, further the letter clarifies that the area shown in horizontal line are not in their possession and is in fact in the possession of the owner of adjacent survey no which is no one besides of the plaintiff himself. He further contended the plaintiff has been in possession of suit-land the defendant in his written statement produced vide exhibit-16 by making general denial and such general denial can be said to be evasive denial of the pleading. He further contended that there is a prima facie case in favour of the plaintiff and the

balance of convenience is also in his favour and if the temporary injunction would not be granted in their favour, he will have to suffer irreparable injury and great hardship which would not be compensated in terms of money. Hence prayed for the temporary injunction. and in support of his argument The Ld. Adv. for the plaintiff has relied on Hon'ble Apex court ruling Dalpat kumar v.prahladsingh (1992) AIR 1993 SC 276. this court fully agreement with ratio of judgment and kept the ratio in mind while deciding this application

- (4) Heard the Ld. Advocate for the defendant He contended that the suit of the plaintiff is required to be dismissed along with the application for temporary injunction since it does not disclose the cause of action in favour of the plaintiff against the defendant. He further contended that the plaintiff cannot be said to be in possession of suit property since the present land is name of defendant and the defendants is the owner of suit property and having possession over it, He further contended that before filling of suit it is mandatory on side of plaintiff to issue notice u/s 80 of CPC and in absence of such notice the suit of plaintiff is not maintainable in eye of law, He further contended that as per section 269 and 270 of Gujarat panchayat act before filling of suit notice is mandatory and after issue notice plaintiff has to file suit within six month from cause of action arises. he further contended that the Sarigam village located in border of Gujarat state therefore the boundary is not certain, he further submitted that the school is 70 years old and thousands of students are studying there therefore if interim injunction are granted then it would be great hardship to the school. he further contented that plaintiff intend to grab the land of school, the possession of disputed land lying with school, he further contended that earlier on 2016 collector of valsad passed order to remove encroachment over suit land He further contended that it is well settled law that an owner would be deemed to be in possession of a property in the eye of law. He further contended that the fact that the defendant is owner and in possession of suit property is also proved by

the documents produced by the defendant vide mark-17/1 to 17/6. He further contended that the application for temporary injunction can be said to defective one and it does not satisfy the basic requirement of granting temporary injunction under O-39, R-1 & 2 of the Code of Civil Procedure. He further contended that there is no prima facie case can be said to have been made out by the plaintiff in his favour and the balance of convenience is also not in their favour and if the temporary injunction would be granted in favour of the plaintiffs, the defendant will have to suffer irreparable injury and it would cause him great hardship than the plaintiffs. He further contended as per his written statement and prayed for the rejection of the application for temporary injunction.

(5) This is an application for temporary injunction and there are three basic principles for granting or refusing to grant temporary 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 each 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) Considering the material on record and the arguments advanced by the Ld. Adv. for both the parties, and the documents filed by the plaintiffs and defendant vide mark 3/1 to 3/16, mark -23/1,25/1 and mark-17/1 to and 17/6 respectively, it appears that the present plaintiff has purchased

property at village Sarigam account no,1806 Old survey no.268/8/paikee2(new Survey No.3293) ad measuring 00-24-28 Sq.Mtrs. from Rameshbhai thakorbhai Bhandari and the said property is in the name of plaintiff and It also appears that the plaintiff name posted in the revenue records like village form no.7.It also appears from the documents filed by the plaintiff and defendant vide mark-3/4 and mark-17/4 of village form no.07 that at present defendant having land bearing old survey no.268/10/1 (New survey no.1702)of vilalage Sarigam as a name of “Me pre-saheb District school board thana” Now before further discussed on this factual aspect, considering the documentary evidence it is undisputed fact that the present plaintiff filled a Special civil application no,1602 of 2023 before Hon’ble High court of Gujarat for issue appropriate writ, order or direction by directing respondents to measured the land of survey no.2268/8/paike 2 ad-measuring 2428 sq.mt. and the same was allowed by Hon’ble High court and on basis of Hon’ble High court order concern authority measured disputed land and the map of the same is produced by plaintiff wide mark-3/9 and wide mark-23/1 respectively, further it also undisputed fact that present defendants issue a notice dated 21-01-2025 for demarcation of disputed property situated a Sarigam and same was challenged by present plaintiff by way of special Civil application 946 of 2025 and same was disposed Hon’ble High court with direction that the respondent no,03 not to implement the notice dt.21/01/2025 till 31/01/2025.and thereafter defendant issue caveat notice to plaintiff and present plaintiff filled this suit before this court.

- (7) the plaintiff advocate heavily submitted in his argument that that they are in possession over disputed land and they establish the relevance of each the documents relied upon the documents in the successive contents to show the prima facie case in favour of the plaintiff, so in this context now looking to documents produced by plaintiff along with suit first of all looking to the map produce by plaintiff wide mark-23/1 its appear that said map prepared by land record office as per order of Hon’ble High

court and in this map it is clearly described that present plaintiff having possession over disputed land shown as mark-B ad-measuring 00-19-45 Sq.Mt. further it also appear from map that the disputed land and the defendant land adjacent to each other, further it also appear that there is concrete wall between disputed land and defendant land which is mark as “b” to “c” in map. So on basis of map wide mark-23/1 prima facie appear that the present plaintiff having actual physical possession over disputed land. On other side The Ld.advocate of defendant submitted in his argument that the present plaintiff has an intention to grab the land of defendant the plaintiff has malafide intentions concealed various material a facts and the information to the court defendant school standing to the land bearing old survey no,268/10/1 which has it original measurement of 0-51-61 sq.mtr. he further submitted that there is error found in the measurement hence it came to be canceled by order dated 04/07/2019 in which measurement dated 15/06/2017 was canceled and the measurement dated 06/06/2016 and 15/10/20216 was remain as it is and by way of order dated 16/07/2016 by the collector valsad the encroachment was to be removed and said land to be hand over to the present respondent, so now in this context looking to the order produce by defendant wide mark 17/5 its appear that the collector valsad passed order to remove encroachment over suit land on 16/07/2016,and further looking to the document “Rojkam” which is produce along with wide maark-17/1,it appears that the present disputed land possession hand over to the school by earlier possession holder in presence of Mamlatdar Umargam and other officials and further appears that defendant school also make fencing over it, and there in nothing on record which show that the said order of the collector was challenged by the earlier possession holder or not, now further looking to the village from no.07-12 which is produce herewith wide mark 17/2 and 17/03 respectively, it appears that earlier actual measurement of survey no.268/10/01 of defendant is shown as 00-52-61Sq.Mtr. Now further looking to the village form no.07 which is

produced wide mark 17/7, it appears that at present defendant school land actual measurement shown as 0-34-53 Sq.Mtr.in revenue record therefore it is admitted position that at present defendant school not having actual land as per revenue record. so as discussed above prima facie appears from documentary evidence adduced by both party that at present plaintiff having possession over disputed land but it is also evident on record that by order of the collector Valsad the possession of disputed suit land already handed over to the defendant therefore at this juncture it can not to be said that the present plaintiff having in lawful possession of the disputed land further there is nothing on record which revealed that present plaintiff have been carried out any measurement before purchasing of property bearing survey no.268/10/01 now converted in to new survey no.1702. Therefore also prima facie not established that the present plaintiff having lawful possession over suit land.

- (8) So in view of the above discussion the plaintiff cannot be said to have established prima facie case against defendant since the plaintiff is not in lawful possession over suit land And it is well settled law that no temporary injunction would be granted in favour of person who fails to prove prima facie case. Furthermore it has been held by the Hon'ble Supreme Court in para-13 of its pronouncement in "Kashi Math Samsthan v. Srimad Sudhindra Thirtha Swamy" reported in AIR 2010 SUPREME COURT 296 that *"It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of*

balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted". So in view of aforesaid reasons and discussion the application for temporary injunction is liable to be rejected. Hence I hereby pass following order in the interest of justice.

ORDER

The application for temporary injunction of plaintiff is hereby dismissed (rejected).

The Cost of this application shall be follow the final outcome of the suit.

Pronounced in open court today 01 of April,2025.

Place: Umbergoan

Date : 01/04/2025

(N.R.GOHEL)
2nd Addl. Civil Judge,
Umbergoan
(GJ-01584)