

**ORDER BELOW EXH. 5**  
**(Passed on 23<sup>rd</sup> November 2017)**

This is an application under order 39 Rule 1 and 2 of the Civil Procedure Code for grant of temporary injunction preferred by plaintiff to restrain defendants from selling suit properties mentioned in para no. 2 of the plaint during the pendency of the suit.

2. The factual matrix of plaintiff's case runs as under:-

The suit property includes three Gat nos.( 275, 276 and 277). One Amber Fadale was having two sons namely Rama Fadale and Dama Fadale. Dama Fadale was the original owner of suit properties. After the death of Rama Fadale, his four sons sold agricultural land bearing Gat nos. 276 and 277, one of the suit properties to plaintiff for sum of Rs.3500/- on 17.06.1991 by executing the stamp paper. The plaintiff further averred that suit property i.e. Gat no.275 was sold by Dama Fadale to plaintiff for consideration of Rs. 3500/- on 18.11.1991 by executing a stamp paper. The plaintiff averred that since then, he is having peaceful possession over the suit properties and cultivating the same. The defendants without having any legal right, title and interest, falsely created bogus documents and the basis of the same are claiming the ownership and possession of the suit properties. The suit properties

are in absolute possession of the plaintiff. There is every apprehension that the defendant nos.14 to 16 will create a third party interest by selling the suit properties. Hence, the defendants are to be restrained by order of temporary injunction.

**3.** Defendants resisted and vehemently opposed the instant application by filing reply at Exh.57 and denied in toto the entire averment of plaintiff. The defendants contended that defendant nos. 14 to 16 have absolute ownership and possession of suit properties bearing Gat nos.275, 276 and 277 ad-measuring area of 0.93 HR. The defendant nos.14 to 16 contended that the suit properties were purchased by them on 09.06.2016 and 06.09.2016 from one Insaram and Mansaram by way of registered sale deed. The defendant nos.14 to 16 were put in possession of the suit properties since the date of execution of registered sale deeds. Pursuant to sale deeds, their names were mutated on revenue record of the suit properties. The defendant nos.14 to 16 contended that in the year 2016-17 defendant nos.14 to 16 started cultivating the suit properties. On 18.06.2017 when the defendant nos.14 to 16 were cultivating the suit properties, the plaintiff along with some local villagers entered the suit property and tried to disturb the peaceful possession of defendant nos.14 to 16 over the suit property. The defendant nos.14 to 16 contended that the plaintiff threatened that the suit properties are in his ownership. Being aggrieved by the act of plaintiff, the defendant nos.14 to 16 approached Police Station Deori and lodged report regarding the incident. However, the police

machinery did not take any legal action against the defendants. Hence, they were constrained to file RCS no. 12/2017 for grant of permanent injunction along with an interim relief of temporary injunction against the plaintiff.

4. The defendants lastly contended that the plaintiff has filed the instant suit with an intention to harass the defendants. The suit of plaintiff is false, bogus and not maintainable and fails to satisfy triple test and prayed to out rightly reject the instant application with costs.

5. Following points arise for determination and I have recorded my findings with reasons to be followed thereon.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the plaintiff proves prima facie case lies in his favour?	No.
2)	In whose favour the balance of convenience lies?	Defendant nos. 14 to 16.
3)	Whether the plaintiff would be put to irreparable loss, if injunction is not granted?	No.
4)	What order?	As per final order.

### REASONS

6. I have heard Mr. S. K. Bawariya learned counsel for the plaintiff and Mr. B. T. Maskare learned counsel for defendants.

7. As to point nos. 1 to 4 :- As point nos. 1 to 4 are

inter linked with each other I prefer to discuss it under one common caption. Mr. S. K. Bawariya submitted in consonance to his plaint and application. In order to substantiate his submissions Mr. Bawariya invited my attention towards documents filed on record. He submitted through his application that, prima-facie case and balance of convenience lies in favour of plaintiff and irreparable loss would be caused to the plaintiff which could not be compensated in terms of money and accordingly prayed to allow the instant application.

**8.** Per Contra Mr. B. T. Maskare submitted that plaintiff has filed instant application with ulterior motive just to harass them. Mr. Maskare submitted in consonance to his reply at Exh.57. In order to substantiate his submissions he invited my attention towards documents to show their bonafides and also submitted that documents filed by plaintiff are not reliable. Mr. Maskare also submitted that plaintiff is suppressing material facts before this Court and plaintiff has not approached this Court with clean hands and even the suit of plaintiff is false and bogus and prayed to out rightly reject the instant application with costs as prima-facie case and balance of convenience does not tilt in plaintiff's favour and irreparable loss would be caused to defendants.

**9.** It is canon of settled legal principle that power to grant injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this

relief as the matter of right or course. The grant of injunction is at the discretion and must be exercised in favour of the party only if the Court is satisfied that, unless the other party is restrained by an order of injunction, irreparable loss or damage would be caused to that party. The court grants such relief on the principle of **ex debito justitiae** i.e. to meet the ends of justice.

10. In case of **Gujrath Bottling Co. Ltd Vs. The Coca-Cola Co., And others (1995) 5 SCC 545 = AIR 1995 SC 2372** wherein Hon'ble Supreme Court has held that-

*Under order 39 of the Code of Civil Procedure, jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court on being approached, will, apart from other considerations, also look to the Conduct of the party involving the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature the party involving the jurisdiction of the court has to show that he himself was not at fault and that he was not unfair or inequitable in his dealings with the party against who he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under order 39 Rule 1 or Rule 2 of the Code of Civil Procedure but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or*

*proceedings.*

**11.** Reverting back to the hub of the matter, the factum of ownership and possession over the suit property is the real bone of contention between parties inter se in dispute. On perusal of documents filed on record, it is seen that, the suit property is alienated in the name of defendants by virtue of registered sale deeds. It is pertinent to note here that the registered sale deeds clearly depict that the suit properties were transferred in favour of defendant nos.14 to 16 for consideration.

**12.** At this juncture, it is relevant to discuss the documents relied upon by the plaintiff. The plaintiff relied upon stamp paper dated 12.11.1991 (document no.1) and stamp paper dated 15.06.1991 (document no.2). Perusal of both these documents show that these are unregistered documents pertaining to year 1991. It is interesting to note that document no.2 is dated 15.06.1991. In said stamp paper an endorsement has made that, suit properties bearing Gat nos. 276 and 277 are to be transferred to plaintiff for consideration of Rs.3500/-. Further, endorsement shows that father of the transferee is the owner of suit property bearing Gat nos. 276, 277. The endorsement reflects that the father has died hence, the suit property is being sold. Document no.1 is dated 12.11.1991 i.e. pursuant to document no.2. On this document, an endorsement has made that the father of transferee is still alive and after his death the suit land will be mutated in the name of plaintiff. It appears to my

mind that how the father of transferee was dead on 15.06.1991 and was alive on 12.11.1991. This itself shows that the documents relied upon by plaintiff are unreliable at this juncture. Further, both the stamp papers are merely agreements. They have not been registered. In my view they form very weak piece of evidence.

**13.** It is pertinent to note here that both the rival parties have relied upon documents to show their ownership and possession over the suit properties. The documents filed show that the ownership is vested on the defendants by way of registered sale deeds. Upon weighing the documents, I am of the view that the claim of the defendants stand on a much higher footing than that of the plaintiff. Another important aspect which needs to be discussed here is that the defendant nos. 14 to 16 have come up in possession with suit properties by way of registered sale deeds, on the contrary, the plaintiff claimed to be in possession since year 1991. The plaintiff was at liberty to show his possession over the suit property, however, he has failed to do so. In my view, the stand taken by defendants is bonafide and the documents speak volumes about their ownership and possession. The documents filed by the plaintiff cannot be considered at this juncture. The factum of possession and ownership with regards to story put forward by plaintiff appears to be a moonshine.

**14.** Also, the facts alleged by the plaintiff are such that, they can be considered at a later stage of evidence after framing of

issues. At this juncture, prima facie ownership of defendant nos. 14 to 16 remain unchallenged and unshaken. Hence, in my view the pleadings of rival parties are counter blast to each other and can only be decided after framing of issues and leading evidence.

**15.** On comparing the hardship which would be caused to parties, the defendant nos. 14 to 16 would suffer more hardship as suit property is in their ownership and possession presently. In the present matter, it transpires from documents filed on record that defendants are in ownership and possession of suit properties. Hence, I concur with submissions of Mr. B. T. Maskare and accordingly answer point Nos. 1 to 3. In the result I am inclined to pass the following order.

### **ORDER**

- 1) The application at Exh.5 hereby stands rejected.
- 2) Parties to bear their own costs.

Sd/-

Deori.  
Date: 23.11.2017

( S. A. Ingley )  
Civil Judge Jr. Dn., Deori.