

ORDER BELOW EXH.5.  
(Pass on this 17<sup>th</sup> day of March, 2016)

This is an application for grant of temporary injunction vide Order 39 Rule 1 and 2 of the Code of Civil Procedure thereby restraining the non-applicants and thier agents from creating third party interest over the property in Survey No. 302 admeasuring 1.62 R. Class-II situated at Nisadkheda [hereinafter be referred as “the Suit Property” for the sake of convenience].

2] Read the application and the say at (Exh.15).

3] Heard the learned Adv. Shri. S.A. ALi for the applicant and Adv. Shri. Mohata for non-applicants. Gone through the documents filed by the respective parties on record below (Exh.4 and 16).

4] The Points for my determination alongwith my findings thereon are as under :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether prima facie case lies in favour of the plaintiff ?	Yes.
2. Whether balance of convenience lies in favour of the plaintiff ?	Yes.
3. Will plaintiff suffer irreparable loss, if injunction is refused ?	Yes.
4. What order ?	Application is allowed.

R E A S O N S

**As to Points No.1 to 3 :**

5] It is the say of the applicant that he is in possession of the suit property since last 20 years. He came to know that the non-applicants are trying to sale the suit property. Hence, he submits for restraining them from creating

third party interest till disposal of the suit.

6] The non-applicants have filed their say below Exh.15. Though in specific reply respect of possession of the plaintiff since 20 years they have denied. But in para 9 of the reply they have submitted that the plaintiff is in unauthorized occupation of the suit property. In para 21 it is admitted by them that their predecessor were in possession of the property upto 1997-98. It is further admitted in this para that the plaintiff has unauthorizedly illegally came into possession of the suit property. It is their submission that the plea of adverse possession and declaratory relief on that basis is barred by limitation and the plaintiff could not claim ownership merely on the basis of long possession. Accordingly, it is their say that as the main relief cannot be granted the interim relief could not also be granted. This Court is not having jurisdiction to entertain this application.

7] The learned advocate Shri. Mohata has filed judgments of Hon'ble Supreme Court and Punjab and Haryana High Court with pursis at Exh.21. I have gone through both the citations. The Hon'ble Apex Court has held in Gurudwab Sahib case reported in 2014(1) SCC 669 that the plea of adverse possession could not be raised as a sword by it should be raised as a shield. In para 10 it has been observed that as the plaintiff was in possession that relief was confirmed as not contested by the defendants. It was further observed that the suit is for ejection is filed then the plaintiff may contest that suit and may raise the plea of adverse possession.

8] This suit is appears to be filed for 2 relief of declaration as well as for permanent injunction and the present application is for temporary injunction in aid to the second relief of the main suit. Hence, at this stage, without any

application by the defendants or without any claim for ejectment the ratio as stated above will not be helpful to them. They have every right to take that plea by way of either counter claim or separate suit if they are intended to do so.

9] It has to be observed that once the defendants are admitting the possession of the plaintiff over the suit property though they have taken the defence of illegal or unauthorized possession but it is the matter of trial. Further unless and until the defendants are having the possession of the suit property they are also not in position to sale the same to any third party because in view of their admission in respect of possession of the plaintiff no diligent person will get the possession merely on the basis of title. So, to avoid further complications of this dispute it will be better to restrain the defendants by this application to create the third party interest in the suit property. It is to be noted that if the defendants sale out the property to anyone then that third person will only get the title but he will have to fight for possession which means there is birth of another civil dispute in between the parties. Hence, as it is a well proverb is that prevention is better than cure this application is deserves to be allowed. Accordingly, I answer point Nos.1 to 3 in the affirmative.

**As to Point No.4 :**

10] In view of my affirmative findings of Point No.1 to 3 the application will have to be allowed. Hence in answer to point No.4, I pass the following order :-

**O R D E R**

1] The non-applicants are hereby restrained from creating third party interest over the suit property in any manner till disposal of the suit.

2] The costs in cause.

Mouda.  
Date: 17.03.2016.

(Tejwant Singh A.Sandhu)  
Civil Judge Jr. Dn., Mouda