

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/APPEAL FROM ORDER NO. 212 of 2024**

**With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/APPEAL FROM ORDER NO. 212 of 2024**

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HEMALKUMAR ARVINDBHAI BHOJAK

Versus

VIPUL AMRUTBHAI PATEL

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Appearance:

MR AMIT N PATEL(2749) for the Appellant(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 07/02/2025

ORAL ORDER

ORDER IN APPEAL FROM ORDER NO. 212 of 2024

1. Heard Mr.Amit N. Patel, learned advocate for the appellant.
2. He would submit that the appellant is the original plaintiff of the suit property, wherein he is residing with his family since 2006. He would further submit that it is the case of the plaintiff before the trial court that the suit property has been purchased from the original owner, albeit, no registered sale deed has been executed either in favor of the plaintiff or the defendant, who happens to be the erstwhile employer of the plaintiff.
 - 2.1 He would further submit that the plaintiff is asking a relief for perfecting his title by way of adverse possession, as well as an alternative prayer has been made that having paid the sale consideration to the defendants, which was deducted from his salary as averred in the plaint, thereby having a right in the suit property.
 - 2.2 He would further submit that when the defendant has chosen not to appear in the suit by not filing any written statement or any reply to the Exhibit 5 i.e., injunction application, the trial court ought to have decided the application as per the averment made in the application.

2.3 He would submit that the plaintiff is undisputedly in possession of the suit property, which ought to have been protected by the trial court by granting an order of status quo.

2.4 He has drawn the attention of this court to the subsequent events that happened after the passing of the impugned order, whereby the defendant has filed an independent civil suit no. 522 of 2024 against the plaintiff, seeking declaration and possession of the suit premises, which is pending before the trial court.

2.5 So, Lastly, he would request this court that, in the pendency of the suit filed by the present appellant-plaintiff, the injunction, as prayed for, may be granted till the disposal of the suit.

3. Considering the aforesaid submissions, prima facie, it appears that the appellant is residing with his family since 2006 in the suit premises. The averments made in the plaint remained uncontroverted because the defendant has chosen not to appear and file any written statement.

4. It appears from the plain reading of the copy of the plaint that neither the plaintiff nor the defendant, as on date, is holding the title over the suit property. In such a situation, prima facie, I am of the view that the order of status quo ought to have been granted by the trial court, as it is a settled legal position that no one should be disturbed in possession without recourse to law. It is also required to be noted here that the defendant has now filed a suit being 522 of 2024, seeking declaration and possession of the aforesaid suit property, which would be an additional factor in favor of the appellant, thereby requiring his possession to be protected till the disposal of the respective suit.

5. In view of the above, issue notice returnable on 21.03.2025.

ORDER IN CIVIL APPLICATION (FOR STAY) NO. 1 of 2024

1. Heard Mr.Amit N. Patel, learned advocate for the

applicant/appellant.

2. At the outset, he is praying to grant leave to add prayer, thereby the applicant can request this court to grant an order of status quo in favor of the appellant/applicant. Permission, as sought for, is granted. The amendment shall be carried out forthwith.

3. This court has examined the merits of the matter and passed a detailed order in the appeal. Prima facie, the case has been made out by the applicant, thereby his possession is required to be protected till the disposal of the suit, inasmuch as the plaintiff is residing in the suit premises since 2006 with his family, and the defendant is not holding any title over the suit premises, as he has chosen not to appear in the suit, and not controverted the averment made in the plaint.

4. Considering the peculiar facts and circumstances of the case and also keeping in mind the settled principle of law that no one should take the law in their own hands and that the ejection of any person is required to be done through recourse to law, which has already been adopted by the appellant by way of filing an independent civil suit, being 1731 of 2022.

5. In view of the aforesaid observations and discussion, as well as the observations made while issuing notice in the appeal, at this stage, this Court would like to protect the applicant by granting ad-interim relief pending the hearing of the appeal.

6. Rule returnable on 21.03.2025. Ad-interim relief in terms of prayer 5 (AA) is granted and the parties are directed to maintain status quo till further orders.

MOHD MONIS

(MAULIK J.SHELAT,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MOHD MONIS(HC01900), PRIVATE SECRETARY, at High Court of Gujarat on 07/02/2025 19:22:14