
(2014) 01 GUJ CK 0045

In the Gujarat High Court

Case No : Special Civil Application No. 6816 of 2009

Bharatsinh Gomansinh Solanki and Others

APPELLANT

Vs

Nagar Pramukh and 1 Another

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Citation : (2014) 01 GUJ CK 0045

Hon'ble Judges : R.D. Kothari, J

Bench : Single Bench

Advocate : M.P. Shah and Ms. Kruti M. Shah, for the Appellant; Dilip B. Rana, for the Respondent

Final Decision : Allowed

Judgement

R.D. Kothari, J.—Being aggrieved by the concurrent order of vacating the interim relief in an application below Ex.-5, the petitioner has preferred the present petition. The petitioners are original plaintiffs in Civil Suit No. 64 of 2005. The said Civil Suit was instituted before Civil Judge, Junior Division, Mangrol, District Surat. The dispute appears to have arisen with the respondents herein, who are the defendants in the said Civil Suit. The defendants were to make road on the southern side of the plaintiffs' land. The suit land is at Village Tarsadi. It is a part of Survey No. 275. It is say of the plaintiff that father of the present plaintiff had purchased the suit land by executing the registered sale deed. It is also say of the plaintiffs that the suit land consists of 16,644 sq. mtr. Measurement of the suit land and details of surrounding boundaries is stated by the plaintiffs in his application (Ex. 5).

2. It is further say of the plaintiffs that before the City Survey Officer, the proceedings had proceeded without giving plaintiffs sufficient opportunity to make the representation.

3. Heard the learned advocate Ms. Kruti M Shah for the petitioners and Mr. Dilip B Rana, learned advocate for the respondents.

4. Learned advocate Ms. Kruti M Shah draws the attention of the Court that before the learned trial court the respondents have neither filed written submissions nor has filed any reply. The learned trial Court records that since the respondents have not filed any written submissions, their right to file written submissions is closed. The plaintiffs have produced the relevant documentary evidence before the learned trial court. However, the court had refused to grant interim relief on the ground that plaintiff has made suppression of facts and has not come forward with clean hands. This finding came to be recorded by the trial court on the basis of assertions made by the respondents in Caveat Application.

5. Learned advocate Ms. Shah has also drawn attention of the Court that simultaneously revenue proceedings have also been taken place. Learned advocate has drawn attention to the order passed by Deputy Collector whereby the said authority was pleased to remand the case to Mamlatdar by recording findings No. 1 to 5. The order of Deputy Collector is at Page 46 of the paper-book.

6. At the time of hearing, it was pointed out that proceedings before Mamlatdar has not concluded yet. It was submitted that said proceedings may have remained pending due to interim relief granted by this Court. This Court by order dated 12.01.2010, after considering the rival submissions of the parties, had confirmed the interim relief granted to the petitioner.

7. The suit instituted by the plaintiffs, from which the present Special Civil Application arises, is of 2005. Considering the nature of dispute between the parties and in the facts and circumstances of the present case, it would be just and proper to allow the present petition with direction to dispose of the Regular Civil Suit No. 64 of 2005 expeditiously.

8. In view of above, present petition is allowed. The order passed by the learned trial Court below Ex.-5 in Regular Civil Suit No. 64 of 2005 and an appeal arising thereof, are quashed and set aside. Interim relief granted earlier by this Court vide order dated 12.01.2010 is made absolute. The effect of making rule absolute is, - parties to maintain status quo till the final disposal of the suit. It is further directed that the learned trial court shall disposed of the suit as expeditiously as possible with the help of learned advocates for the parties preferably within six months from the receipt of the writ by the trial court.