

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 162 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LALJIBHAI @ POPATBHAI BHUVA

Versus

CHIMANBHAI CHHAGANLAL PATEL

Appearance:

MR SUREN M SHAH for Petitioner

NANAVATY ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 30/06/98

ORAL JUDGEMENT

The appellant herein is the original defendant and the respondent is the original plaintiff in special civil suit no. 66 of 1997. The plaintiff has filed the suit for obtaining relief of specific performance in respect of the suit property. The plaintiff has finally prayed for a relief of permanent injunction restraining the defendant, his persons, servants, agents etc. from

transferring the suit property by sale, mortgage, gift, exchange, lease or in any other manner. In the said suit, the plaintiff moved an application for interim injunction at Exh. 5 against the defendant, his persons, servants, agents from transferring in any manner the suit property during the pendency of the suit. Said injunction application came to be granted by the learned 4th Joint Civil Judge, (S.D.) Junagadh vide his order dsated 25th March, 1998. The defendant has challenged the said order, inter-alia, on the ground that the learned trial Judge has erred in not hearing the transferees of the suit property before granting interim injunction which would take within its sweep not only the defendant but his assignees and other persons as particularized in the impugned order. Plaintiff did move an application Exh. 20 to join assignees but the defendant and the assignees contested the same and eventually it was dismissed. In that view of the matter, the defendant-appellant cannot be heard making a grievance with regard to the transferees having not been heard before the interim order was passed. It may be noted that the transferees are not before this Court. It may also be noted that the order below Exh. 20 has not been taken further by any of the parties. Under such circumstances, the only option open to the defendant in this respect is to intimate the transferees with regard to the order on interim injunction application passed by the trial Court and complained of by the defendantappellant in this appeal.

2. In so far as the merits of the interim injunction are concerned, it is obvious that when the relief of specific performance of contract to sell the immovable property was claimed in the suit and when the permanent injunction was also claimed, the plaintiff had shown prima-facie case before the trial Court as discussed by the said Court in the impugned order. No hardship is likely to be caused to the defendant since the defendant admitted that he is not in a possession of the property in question nor claims any equity therein. In that view of the matter, this appeal deserves to be dismissed. Following order is, therefore, passed:

3. The appeal is dismissed with no order as to costs.

30.06.1998. *****

Vyas