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Exhibit -

IN THE COURT OF 9th ADDITIONAL DISTRICT JUDGE,

AHMEDABAD (RURAL)

Misc. Civil Appeal No. 24 OF 2023

Appellants : (Ori. plaintiffs)

Lr. of Rampratap Chhoturam Sharma

1. Bhavin S/o. Rampratap Sharma

Age : 35 years, Occu. Business,

R/o. 15, Lake view Society, Govindwadi,

Isanpur, Ahmedabad.

2. Praveen S/o. Rampratap Sharma

Age : 38 years, Occu. Doctor,

R/o. 15, Lake view Society, Govindwadi,

Isanpur, Ahmedabad.

3. Bhanuben D/o. Rampratap Sharma

Age : 40 years, Occu. Household work,

R/o. 5, Suvarnaraja Society, Nr. Gelani Petrolpump,

Nizampura, FAtchganj, Vadodara.

4. Teena D/o. Rampratap Sharma

Age : 41 years, Occu. Household work,

R/o. 1220, Titar Walo Ki Gali,

Baba Harishchandra Marg,

Chandpol Bajar, Jaipur, Rajasthan.

Appellant No. 2 to 4 Through their Attorney Holder

Bhavin S/o. Rampratap Sharma

Age : 35 years, Occu. Business,

R/o. 15, Lake view Society, Govindwadi,

Isanpur, Ahmedabad.

VERSUS**Respondent : (Ori. Defendant)**

Chandubhai Muljibhai Patel

R/o. 192, 193, Shreya Satav Society,

B/s. Vyaswasdi, Kathwada Road,

Naroda, Ahmedabad.

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**Subject :- Miscellaneous appeal under Order 43 Rule 1(r) of
CPC against Order passed below application for
temporary injunction.**
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Appearance :-

Learned Advocate Mr. R.A. Barot for the Appellant.

Learned Advocate Mr. H.A. Solanki for the Respondent
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: JUDGMENT :

[1] The present misc. civil appeal has been preferred by the appellant / original plaintiff under Section 104 read with Order 43 of the Code of Civil Procedure, 1908 and has challenged the order dated 25/05/2023 below application Exh.5 i.e., application for temporary injunction, passed by Learned 5th Additional Sr. Civil Judge, Ahmedabad (Rural) in Special Civil Suit No.31/2018 wherein the application came to be rejected.

[2] Upon preferring the present appeal, notice was issued against the respondents which was duly served upon them and pursuant thereto Ld. Advocate has appeared before this Court.

[3] The brief facts leading to this appeal are as under :

The appellant is the original plaintiff who has filed suit for specific performance of contract, declaration and permanent injunction inter alia alleging that defendant became owner of the suit property situated at Tal. Dascroi, village Aslali Block/ survey No. 702(old survey No. 605/3) old tenure agriculture land by way of registered sale-deed dtd. 05.10.2011. It is say of the plaintiff that Banakhat pertaining to sale of the suit property came to be executed between plaintiffs and defendant vide agreement dtd. 05.10.2011 and sale consideration came to be fixed as Rs. 10,00,000/-. As per the terms and conditions of the Sata khat defendant is bound to follow procedure for getting the land converted into non-agriculture land and after having availed NA permission it was decided to execute the sale-deed within two months. It is say of the plaintiff that the aforesaid banakhat is still in existence. As per the averments of the plaint the entire sale consideration has been paid to the defendant and possession of the land was handed over to the

plaintiff on 28.09.2016. It is also case of the plaintiff that the plaintiff made construction of godown on the aforesaid land and was let on leave and license. As per the plaintiff's case though entire sale consideration has been paid the defendant has failed to follow the terms and conditions of the agreement the plaintiff was constrained to file suit against the defendant.

[4] After institution of the suit, notice and summons were issued by the Ld. Trial Court against the defendant, which was duly served upon him and pursuant thereto defendant appeared before the Ld. Trial Court and filed written statement vide Exh. 14 *inter-alia* contending that the suit land being agriculture land plaintiff has constructed godown thereon illegally and therefore, plaintiffs don't have prima-facie case. It was contended that the suit is to be dismissed with cost.

[5] Having considered the rival submissions and documents on record the Ld. Trial Court rejected the application at Exh.5 for temporary injunction and therefore, the original plaintiff has filed this miscellaneous appeal before this Court.

Submissions :

[6] I have heard Ld. Advocates for the respective parties *in-extenso*. Learned advocate for the appellant has submitted that the plaintiff has a *prima-facie* case in his favour but the Ld. Trial Court has without application of mind dismissed his application for temporary injunction. It is further submitted that all the necessary three ingredients are proved, but the Ld. Trial Court has failed to appreciate the evidence on record, it is submitted that this appeal is required to be allowed. It is further submitted that the suit is within

time limit as the conditions mandates the defendant to have avail the NA permission. Therefore, it is submitted that the defendant is responsible for non-compliance of the terms and conditions of the Sata khat. No NA permission has been received by the defendant. Such facts are not considered by the Ld. Trial Court. It is further submitted that for the end of justice this appeal should be allowed.

[7] On the other hand Ld. Advocate for the respondent has submitted that his written objections may be treated as his written arguments and submitted that plaintiff has no prima-facie case. It is submitted that this appeal should be dismissed.

[8] Upon perusal of the material on record and upon considering the submissions advanced by the advocates for the respective parties the following points for determination are arisen.

: POINTS :

- 1) Whether appellant has *prima-facie* case as well as has satisfied the necessary ingredients for getting temporary injunction i.e., balance of convenience and irreparable loss in his favour?
- 2) Whether the Order passed by Learned Trial Court below application for temporary injunction is capricious, perverse, arbitrary and against the principles of law and it is required to be interfered with ?
- 3) What order ?

[9] The answers to the above points are as under:

Point No.1: In the Negative.

Point No. 2: In the Negative.

Point No.3: As per Final Order.

[10] The reasons for arriving at the aforesaid conclusion of the points for determination are assigned as under :

: REASONS :

[11] Point No.1 and 2:

At the outset, the cardinal principle governing the provision of temporary injunction is required to be considered. It is well settled that, at the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in great detail. It is well settled principle that the power is discretionary and is to be exercised on sound judicial principles. It is also pertinent to note that as per Order 39 Rule 1 read with section 94 of the Code of Civil Procedure 1908, Court can grant temporary injunction in the following cases,

- (i) where the disputed property is in danger or being wasted, damaged or alienated by any party,
- (ii) where the defendant threatens or intends to dispose of his property with a view to defrauding his creditors and
- (iii) where the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to the disputed property.

Whereas, as per Order 39 Rule 2, temporary injunction can also be granted in the following conditions :

- (i) where the defendant is about to commit breach of contract or cause other injury and,

(ii) where grant of temporary injunction is necessary to prevent the ends of justice being defeated.

[12] At the stage of deciding the application for temporary injunction, the Ld. Trial Court is not required to go into the merits of the case in detail and the power is discretionary and is to be exercised on sound judicial principles. Keeping the aforesaid aspects in mind and considering the pleadings of the parties, if the facts of the case are examined, then, it is evident that suit in respect of suit property was filed for various reliefs.

[13] In view of the cardinal principles of law laid down by the Hon'ble Apex Court, the documents produced by the appellant are required to be taken into consideration. Considering the record it is transpired that plaintiff has filed various documents before the Ld. Trial Court. The Ld. Trial Court has discussed the documents and has come to the conclusion that plaintiff doesn't have prima-facie case and has also failed to satisfy necessary ingredients for the temporary injunction. Having regard to the facts of the plaintiff's case it is undisputed fact that the suit land is old tenure agriculture land. As per the Sata khat of the suit property duty is cast upon the owner of the suit property i.e. defendant that NA permission would be availed by him and after having completed the aforesaid procedure sale-deed would have to be executed in favour of the plaintiffs. Having considered the findings given by the Ld. Trial Court on this point, Ld. Trial Court was of the opinion that the Satakhat dtd. 05.10.2011 contains certain time limit which was expired on 05.12.2011 and the suit must be filed within three years from the aforesaid date. Ultimately the Ld. Trial Court has dismissed the injunction application. The reasons assigned thereto are found to be

just and proper.

[14] Now the question arises that whether the agricultural land can be transferred in favour of the non-agriculturist is a moot question to be decided. At this juncture relevant provisions of the Gujarat Tenancy and Agricultural Lands Act, 1948, sec. 63 reads as under :

"Sec. 63 : Transfers to non-agriculturist barred.

(1) Save as provided in this Act.

(c) no agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein. shall be valid in favour of a person who is not an agriculturist or who being an agriculturist cultivate personally land not less than the ceiling area whether as an owner or tenant or partly as owner and partly as tenant or who is not an agricultural labourer :

Provided that the Collector or an officer authorised by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage or for such agreement, on such conditions as may be prescribed :

Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousands rupees."

[15] Having regard to the aforesaid provisions of law, agreement to sell of the agricultural land in favour of the non-agriculturist without permission of the collector or an officer authorised by the State Government is invalid. As per sec. 6 of the Transfer of Property Act such kind of transaction is void being non-transferable. Under the circumstances sec. 53-A of the Transfer of Property Act would not be applied. It is also required to be noted that as the agreement is hit by sec. 63 of the Gujarat Tenancy and Agricultural Lands Act, 1948, this court is of the opinion that Ld. Trial Court has rightly come to the conclusion that the plaintiff doesn't have prima-facie case.

[16] At the time of adjudication of the application for temporary injunction plaintiff has to show prima-facie case. What is the prima-facie case and what is the prima-facie title has been lucidly

explained by the Hon'ble Apex Court. At this juncture the issue of *prima facie* case has been settled by the Hon'ble Supreme Court in the case of **Dalpat Kumar V/s. Prahlad Singh** reported in **AIR 1993 SC 276** it is held in para 4 as under :

“5... Therefore the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is “a prima facie case” in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bonafied, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The court further has to satisfy that non interference by the court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction.”

[17] Applying the aforesaid ratio to the facts of the present case, considering the documents as discussed herein-above, Ld. Court below has rightly not believed appellant's *prima-facie* case. Furthermore, Ld. Court has rightly considered the other two conditions for getting temporary injunction and has rightly come to the conclusion and has rightly refused the prayer of temporary injunction.

[18] In totality of the facts and circumstances of the case and the reasons assigned by the Learned Trial Court in it's order under challenge, does not suffer any illegality or perversity. Furthermore, this Court is of the opinion that no error has been committed by the Learned Trial Court in arriving at the conclusion of rejecting the application for temporary injunction filed by the appellant and has rightly rejected the application. Hence, there is no reason to interfere

with the order passed by Learned Court below. Hence, Points No. 1 and 2 are answered accordingly.

[19] POINT NO. 3 :

In view of the factual and legal aspect of the case, this appeal is devoid of merits and therefore, the final following order is passed.

:: ORDER ::

- The present miscellaneous civil appeal stands **dismissed**.
- The order dtd. 25/05/2023 below application Exh.5 i.e., application for temporary injunction, passed by Learned 5th Additional Sr. Civil Judge, Ahmedabad (Rural) in Special Civil Suit No.31/2018, is hereby **confirmed**.
- The file be consigned to the record room, after due compliance.
- Certified copy of this order be sent to the concerned Court below forth with.
- R & P be sent, to the Ld. Trial Court forth with.
- No order as to costs.
- All the pending applications, if any, are also disposed off accordingly.

Signed and pronounced in the open Court today on 18th day of March, 2026.

Place : Ahmedabad (Sanjaykumar Chhaganbhai Makvana)
Date : 18.03.2026 9th Add. District Judge,
Ahmedabad (Rural)
Code No. GJ00920.