-:: ORDER BELOW EXH- 5 ::-

1. The application for temporary (interim) injunction filed by the plaintiff under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908, seeks to restrain the defendant from transferring, alienating, assigning, creating any third-party interest in, encumbering, mortgaging, gifting, or otherwise dealing with the suit property described as agricultural land bearing Survey Nos. 326 (old 415/1 Paiki), 425 (old 281/3), 819 (old 305/Paiki 1), 838 (old 306/2 Paiki), and 849 (old 307 Paiki), aggregating to a total area of 2-35-92 Hectares-Ares-Sq. mtrs. approximately, situated in the sim of village Fangadi, Taluka Sanand, District Ahmedabad pending final disposal of the suit. The plaintiff also prays for restraint on handing over possession to any third party or creating any obstruction/interference in the plaintiff's rights.
2. The suit is primarily for specific performance of a registered agreement for sale (Banakhat) dated 06-03-2021, registered at Sr. No. 3636/2021 before the Sub-Registrar, Sanand, whereby the defendant agreed to sell the suit property to the plaintiff for a total consideration of Rs. 56,63,000/- (Rupees Fifty-Six Lakhs Sixty-Three Thousand only). The plaintiff alleges that earnest money of Rs. 12,00,000/- (Rupees Twelve Lakhs only) was paid by cheque drawn on Punjab National Bank, Sanand Branch, on the date of execution. The agreement contains specific terms, inter alia that duration of two years from obtaining clear and marketable title certificate at the defendant's expense and obligation of the defendant to clear title, remove encroachments obstructions/rights of way, and execute a registered sale deed upon payment of balance consideration and prohibition on the defendant from alienating, encumbering, or creating third-party rights/charges during the agreement's subsistence and adjustment of actual measured area for final consideration. The plaintiff asserts readiness and willingness to perform, evidenced by maintaining the balance consideration in the bank , repeated requests for title clearance and execution, and the defendant's refusal citing social,

business, and religious reasons, thereby delaying performance and harassing the plaintiff mentally, financially, and professionally.

3. The defendant has failed to file a written statement despite service, and the right to submit the same stands closed below Exh. 9. The plaintiff has produced certified copy of the registered agreement, bank statement extract showing funds availability, and 7/12 extracts along with 8-A extracts of the suit property at mark 3/1 to 3/3.

4. The grant of temporary injunction under Order 39 Rules 1 and 2 CPC is discretionary and requires cumulative satisfaction of three well-established tests: (i) prima facie case; (ii) balance of convenience; and (iii) irreparable injury not compensable by damages. In suits for specific performance of agreements to sell immovable property, courts are cautious, as specific performance is an equitable, discretionary remedy under Sections 16(c) and 20 of the Specific Relief Act, 1963. However, where the agreement is registered, part, earnest consideration is paid, and the plaintiff demonstrates readiness and willingness, a strong prima facie case often exists, particularly when the agreement contains a negative covenant restraining alienation. The doctrine of lis pendens under Section 52 of the Transfer of Property Act, 1882, protects rights pendente lite but is not always a complete bar to injunction; in appropriate cases, especially to prevent multiplicity of proceedings or practical difficulties in execution, status quo injunction is granted to preserve the subject matter.

In ex parte proceedings, where the defendant is absent and no counter-evidence is adduced, the Court proceeds on the plaintiff's unchallenged averments and documents, provided they disclose a triable case and satisfy the triple test.

5. The plaintiff has produced on record a copy of the registered agreement for sale (Banakhat) dated 06-03-2021, executed before the Sub-Registrar, Sanand, bearing Registration No. 3636/2021 Mark. 3/1. A perusal of the said registered document prima facie discloses that the defendant had agreed to sell the suit agricultural land bearing Survey Nos. 326 (old 415/1 Paiki), 425 (old 281/3), 819 (old 305/Paiki 1), 838 (old 306/2 Paiki) and 849 (old

307 Paiki), aggregating to H.R.A. 2-35-92, situated in the sim of village Fangadi, Taluka Sanand, District Ahmedabad, to the plaintiff for a total sale consideration of Rs.56,63,000/- (Rupees Fifty-Six Lakhs Sixty-Three Thousand only).

It is further evident from the said registered agreement that the defendant had received earnest money of Rs.12,00,000/- (Rupees Twelve Lakhs only) by way of cheque drawn on Punjab National Bank, Sanand Branch, on the execution of the agreement, which payment stands duly acknowledged in the document itself.

Clause of the registered agreement expressly contain a negative covenant / stipulation that during the subsistence and currency of the agreement, the defendant shall not sell, transfer, alienate, mortgage, encumber, create any charge, lien, third-party interest, or otherwise deal with or put the suit property in jeopardy in any manner whatsoever.

The plaintiff has also placed on record the extract of his bank statement Mark 3/2 which prima facie reflects that sufficient funds to meet the balance consideration were available with the plaintiff and continue to remain so. The plaint averments regarding repeated oral as well as mediated requests through Shri Divyarajsinh Bharatsinh Vaghela made to the defendant for clearance of title, obtaining marketable title certificate at defendant's expense, removal of encroachments and obstructions if any, and execution of the final registered sale deed, remain unrebutted in the absence of any written statement or appearance by the defendant.

The plaintiff's case further discloses that despite such repeated demands, the defendant has allegedly delayed performance on one pretext or another including social, business and religious reasons, refused to bear the cost of title clearance, and declined to execute the sale deed even after the plaintiff expressed readiness to pay the balance consideration. These circumstances prima facie constitute breach of the express terms of the registered agreement on the part of the defendant.

In view of the production of the registered agreement, payment and acknowledgment of substantial earnest money, the express negative covenant against alienation and encumbrance, the unrebutted averments of readiness and willingness on the part of the plaintiff, and the defendant's apparent failure and refusal to perform his reciprocal obligations, this Court is of the prima facie view that the plaintiff has made out a strong case for grant of specific performance of the contract.

If the defendant is permitted to alienate, transfer or encumber the suit property to any third party in violation of the negative covenant contained in the registered agreement, the very object and efficacy of the present suit for specific performance would be seriously jeopardised and the suit itself would be rendered infructuous. Hence, a prima facie case is made out in favour of the plaintiff for interim protection of his rights under the registered agreement dated 06-03-2021.

6. The suit property comprises agricultural land bearing Survey Nos. 326 (old 415/1 Paiki), 425 (old 281/3), 819 (old 305/Paiki 1), 838 (old 306/2 Paiki) and 849 (old 307 Paiki), aggregating to H.R.A. 2-35-92, situated in the sim of village Fangadi, Taluka Sanand, District Ahmedabad.

It is the specific case of the plaintiff that he requires the suit property for the purpose of expanding his existing agricultural operations and farming business, as his agricultural income has increased and he is in genuine need of additional cultivable land. The plaintiff has produced on record the registered agreement for sale dated 06-03-2021 Mark 3/1, whereby the defendant had expressly agreed not to alienate, encumber or create any third-party interest in the suit property during the subsistence of the agreement.

If the interim relief prayed for is refused and the defendant is permitted to alienate or transfer the suit property to any third party in breach of the negative covenant contained in the

registered agreement, the plaintiff will be compelled to institute fresh proceedings against such transferee for cancellation of the transfer or for enforcement of his rights, which will lead to multiplicity of proceedings. Further, even though the doctrine of lis pendens under Section 52 of the Transfer of Property Act, 1882 would apply, the plaintiff would face practical difficulties and complications in execution of the final decree, including delay, additional cost and hardship in obtaining effective relief against subsequent transferees who may claim bona fide purchase for value without notice. Such a situation would render the very object of the present suit infructuous and defeat the ends of justice.

On the other hand, if the temporary injunction is granted restraining the defendant from alienating, transferring, encumbering or creating any third-party right or interest in the suit property, no substantial prejudice or irreparable injury is likely to be caused to the defendant. The registered agreement itself contains an express negative covenant prohibiting the defendant from dealing with the suit property in any manner during the currency of the agreement. The defendant has not placed on record any material to demonstrate any urgent or pressing need or necessity to transfer or alienate the suit property at this stage, nor has he shown that grant of injunction would cause him any disproportionate hardship or financial loss that cannot be adequately compensated at the final hearing.

In these circumstances, the balance of convenience clearly tilts in favour of the plaintiff and against the defendant. Preservation of the status quo as regards title, possession and alienation of the suit property is necessary to protect the subject-matter of the suit and to ensure that the relief ultimately granted by the Court, if any, can be effectively executed without unnecessary complications or multiplicity of litigation.

7. It is a settled principle of law that immovable property is unique in character and its alienation or transfer to a third party, particularly in breach of an express negative covenant contained in

a registered agreement for sale, ordinarily results in injury which cannot be adequately compensated by money alone

In the present case, the plaintiff has specifically averred that he requires the suit agricultural land for the genuine purpose of expanding his existing farming and agricultural business operations, as his agricultural income has increased and he is in bona fide need of additional cultivable land. The plaintiff has invested substantial earnest money of Rs.12,00,000/- (Rupees Twelve Lakhs only) under the registered agreement dated 06-03-2021, which amount stands duly acknowledged by the defendant in the document itself.

If the defendant is permitted to alienate, transfer, mortgage, encumber or create any third-party interest in the suit property during the pendency of the suit, the plaintiff will suffer grave and irreparable loss and injury in the following manner:

(i) The plaintiff will lose the unique opportunity to acquire the specific agricultural land needed for expansion of his farming activities, which cannot be substituted by any other parcel of land of identical quality, location, fertility, irrigation facility and proximity

(ii) In the current market scenario, where agricultural land values in the vicinity are steadily rising, any subsequent purchase by the plaintiff of comparable land would involve significantly higher cost, thereby causing financial prejudice beyond mere monetary compensation

(iii) Even though the doctrine of lis pendens under Section 52 of the Transfer of Property Act, 1882 would make any transfer pendente lite subject to the final outcome of the suit, the plaintiff would still face practical difficulties, protracted litigation, multiplicity of proceedings against subsequent transferees, delay in execution of the decree, and uncertainty as to whether effective possession and title can ultimately be secured without further complications or expense

(iv) The very object of the present suit for specific performance would be defeated or seriously jeopardised if the suit property is allowed to be alienated before the final adjudication, rendering the relief sought illusory and ineffective.

The plaintiff has further demonstrated prima facie readiness and willingness to perform his part of the contract by maintaining sufficient funds for the balance consideration in his bank account Mark 3/2 and by making repeated demands upon the defendant. In the absence of any appearance or written statement by the defendant, these averments and documentary evidence remain unchallenged.

While the principle of lis pendens provides some measure of protection against third-party transfers, it does not fully safeguard the plaintiff against the practical prejudice, hardship, delay and additional litigation that would inevitably follow if alienation is permitted at this stage. In suits for specific performance of registered agreements containing negative covenants against alienation, grant of status quo injunction is a well-recognised mode of preserving the subject-matter of the suit and preventing frustration of justice.

8. In the facts and circumstances of the case, particularly the ex parte nature of the proceedings, the production of unchallenged documentary evidence, and the cumulative satisfaction of the triple test like prima facie case, balance of convenience and irreparable injury, this Court is satisfied that the plaintiff has made out a clear case for grant of temporary injunction to protect his rights under the registered agreement dated 06-03-2021 and to prevent irreparable injury to his interest. Therefore, I pass the following order in the interest of justice.

-:: <u>ORDER</u> ::-

The application for temporary injunction Exh-5 is hereby **<u>allowed</u>** till final disposal of the suit.

The defendant, his servants, agents, representatives, or anyone claiming through or under him, is hereby restrained by way of temporary injunction from transferring, alienating, selling,

mortgaging, gifting, encumbering, creating any third-party interest in, or otherwise dealing with the suit property in any manner whatsoever handing over possession of the suit property to any third party or creating any obstruction or interference in the plaintiff's asserted rights under the registered agreement dated 06-03-2021.

The defendant shall maintain status quo as regards possession and title of the suit property.

Pronounced in the open court on the 2nd day of February, 2026.

Place: Sanand

(Ashadullakhan Rahimkhan Ghori)
Additional Senior Civil Judge
Sanand
(GJ00998)