

--: ORDER BELOW EXH- 5 --:

1. The application for interim (temporary) 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 defendants Nos. 1 to 11 from transferring, alienating, assigning, creating any third-party interest in, or disposing of the suit property described as land admeasuring 10,117 sq. mtrs. out of the total area of 20,234 sq. mtrs. in Revenue Survey No. 759/2 Paiki 8 Paiki, situated at village Modasar, Taluka Sanand, District Ahmedabad pending final disposal of the suit.
2. The suit is primarily for specific performance of an alleged oral agreement to sell the suit property joint undivided share of defendants Nos. 1 to 11, coupled with declarations and consequential reliefs. The plaintiff claims that an oral agreement was arrived at with defendant No. 2 for his separate share of 10,117 sq. mtrs. initially, with part consideration of Rs. 10,00,000/- paid by cheque on 23-06-2022, and the balance to be paid upon completion of formalities such as NA conversion, clear title certificate, measurement, separation in revenue records 7/12 extract, and execution of a registered sale deed. Subsequently, it is alleged that defendants Nos. 1 to 11 agreed to sell their joint share another 10,117 sq. mtrs. for Rs. 28,33,000/-, with further payments made in related transactions (including Rs. 4,12,000/- paid to defendant No. 12 to obtain assignment of a prior registered agreement for sale dated 12-10-2021 in favour of defendant No. 12). The plaintiff asserts that substantial part consideration has been paid, documents including 7/12 extracts, burden notes, prior agreement copies, and assignment deed dated 16-08-2024 have been produced, and the agreement constitutes a concluded contract capable of specific performance. The plaintiff fears that defendants, tempted by rising land prices, may alienate the suit property to third parties, rendering the suit infructuous and causing irreparable harm.
3. The defendants have not opposed the application and not filed any written statement therefore, court has passed an order to proceed ex-party against all defendants.
4. The grant of temporary injunction under Order 39 Rules 1 and 2 CPC is discretionary and governed by well-settled principles: (i)

existence of a prima facie case, (ii) balance of convenience in favour of the applicant, and (iii) irreparable injury that cannot be adequately compensated by damages if the injunction is refused.

(4.1) In suits for specific performance of agreements to sell immovable property, courts exercise greater caution, as specific performance is itself a discretionary equitable remedy. A strong prima facie case must be shown based on undisputed facts, and the conduct of the plaintiff is relevant. Mere payment of part consideration does not automatically entitle the plaintiff to injunction unless a concluded contract is prima facie established and possession or part performance under Section 53A of the Transfer of Property Act, 1882 is demonstrated.

The doctrine of lis pendens under Section 52 of the Transfer of Property Act, 1882 protects the plaintiff's rights by making any transfer pendente lite subservient to the decree, but it is not a complete substitute for injunction, particularly where multiplicity of proceedings or practical difficulties in enforcement may arise if alienation occurs.

5. The plaintiff's case rests primarily on an alleged oral agreement supplemented by subsequent dealings, part payments by cheque and other transactions, and documents such as 7/12 extracts showing the suit property in defendants' names, prior agreement to defendant No. 12, and its assignment in plaintiff's favour. While part payments and related documents create a triable issue and raise a serious question regarding the existence of a binding agreement particularly for defendant No. 2's share and the joint share of defendants Nos. 1 to 11, the absence of a written agreement for sale especially for the main transaction involving defendants Nos. 1 to 11 and the oral nature of key terms weaken the strength of the prima facie case at this interlocutory stage. The suit involves multiple parties, overlapping transactions with separate suits filed, and allegations of conditional payments linked to NA conversion and title clearance, which are disputed. Thus, while a triable case exists, it cannot be said to be overwhelmingly strong so as to tilt decisively in the plaintiff's favour without full evidence.

(5.1) The suit property is agricultural land in a developing area with rising values. If injunction is refused and defendants alienate it, the plaintiff may face multiplicity of proceedings against transferees . Conversely, if injunction is granted, defendants are restrained from dealing with their own property pending suit, which may cause them hardship if they need to transact for legitimate reasons. However, defendants have already received substantial amounts, and no urgent need for alienation is shown. The balance leans marginally towards preservation of status quo to avoid complications in execution of decree, if any.

(5.2) Land is unique, and alienation may cause injury not fully compensable by damages, especially in specific performance suits where monetary compensation is often inadequate. However, in the absence of possession with the plaintiff means no relief of part performance under Section 53A or actual possession is made out prima facie and given that the primary relief is specific performance, the injury is not irreparable to the extent warranting immediate restraint without fuller trial. The doctrine of lis pendens provides substantial protection against third-party claims.

6. In view of the above, while the plaintiff has made out a case for triable issues and some risk of alienation, the ingredients for grant of temporary injunction are not cumulatively satisfied to a degree justifying restraint at this stage, particularly given the discretionary nature of relief and the oral conditional aspects of the alleged agreement. Therefore, I pass the following order in the interest of justice.

-:: ORDER ::-

The application for temporary injunction is hereby rejected.

No order as to cost.

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

Place: Sanand

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