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Special Civil Suit No. 62 of 2024
Order below Exhibit-5

[1] The present application has been preferred by the plaintiff seeking interim injunction against the defendant in respect of old tenure agricultural land bearing Block/Survey No.197 admeasuring 0-52-86 Sq. Mtrs. situated at Village Mankol, Taluka Sanand, District Ahmedabad (hereinafter referred to as “**suit property**”). The brief facts of this application goes in following manner:-

That the suit property is in ownership of the defendant along with Gauriben Gohil, Rameshbhai Gohil and Hansaben Gohil and their names were entered into the revenue record of the suit property and they are doing the agricultural activity. It is the contention of the plaintiff that, the defendant herein came into contact with the plaintiff in the month of January-2023 and the defendant was in need of money for his personal use, he contacted the plaintiff and the defendant obtained hand-loan for a sum of Rs.2,15,000/- from the plaintiff with a assurance that, he will return the same as soon as possible. Against the said hand-loan, one agreement dtd. 02-01-2023 was executed between the parties which was dully registered before a notary public with a condition that, against the said hand-loan, the defendant has mortgaged 0-52-86 Sq. Mtrs. of his

portion of land to the plaintiff. After some time, the plaintiff repeatedly requested the defendant to repay the said hand-loan. But till date, the defendant neither returned the said amount nor cancelled the said agreement. Hence, the plaintiff has issued notice to the defendant through his Ld. Advocate on 21.02.2024 with a request to repay the hand-loan within the period of 15 days and take the possession of the suit property. But the defendant failed to reply to the said notice. Therefore, the suit in question was instituted for seeking declaration as well as perpetual injunction against the defendant. It is but obvious that, time would be consumed in final disposal of the suit and if the interim injunction as prayed for is not granted, then the defendant would act as per his own wish and there would be no meaning left for filing of the suit and suit would be infructuous and possession would be disturbed. Hence, this application is given seeking interim injunction. The plaintiff has a prima-facie case, balance of convenience is also in his favour and if the injunction as prayed for is not granted, then he would suffer irreparable loss which cannot be compensated in terms of money. Therefore, the plaintiff has seeking interim injunction along with any other relief which may this Court consider just and proper.

- [2] On institution of the suit and tendering of this application, the Court had passed an order of issuance of show cause notice to defendant on payment of necessary process fees. The defendant was dully served with the summons/notice, but he neither appeared before this Court nor filed any written statement. Hence, the Court has constrained to close the right of the defendant to file his part of reply vide order passed below Exh.7.
- [3] The plaintiff has placed reliance on the documents produced on record vide list at Exhibit-3 (mark 3/1 to 3/5).
- [4] Considering the pleadings and documents available on record, the following issues have been raised before this Court for effectuous disposal in order to decide and determine the present application;

ISSUES FOR DETERMINATION

- (1) Whether the Plaintiff proves that, he has prima-facie case ?
 - (2) Whether the Plaintiff proves that, the balance of convenience is in his favour ?
 - (3) Whether the Plaintiff proves that, if the injunction as prayed for is not granted, then he would suffer irreparable loss which cannot be compensated in terms of money ?
 - (4) What Order ?
- [5] The findings to the above stated issues are given below and reasons for the same are discussed hereinafter:

- (1) In Affirmative.

- (2) In Affirmative.
- (3) In Affirmative.
- (4) As per final order.

:- REASONS :-

Issue No. 1 to 3 :

- [6] Perused the pleadings of plaintiff, present all these issue appears to be co-related to each other and for the said reason, in order to avoid repetition, all the issues are hereby determined together.
- [7] I have heard Ld. Advocate for the plaintiff and carefully gone through the entire record of the suit along with documents produced vide Exh.3. Upon perusal of the record of the suit, it appears that, plaintiff has sought interim injunction in a suit which has been filed for declaration and interim injunction. Entire base of the suit of the plaintiff is mortgage deed, copy of which is produced by the plaintiff vide mark 3/2. Upon perusal of the mortgage deed executed by the defendant in favour of the plaintiff, it appears that, the defendant has mortgaged share of his agricultural land having Revenue Survey No.197 of Village Mankol, Taluka Sannad, District Ahmedabad. Further, it appears that, the defendant has received Rs.2,15,000/- and mortgaged his share of agricultural land stated herein-above for repayment of the plaintiff's money. Lastly, it appears that, both the parties has affixed their

photograph and signed mortgage deed which is notarized before Mr. D.B. Barad, Notary- Advocate at Sanand. Upon perusal of the mortgage deed at mark 3/2, prima-facie it appears that, there is a transaction took place between the parties. Moreover, the plaintiff has only mortgaged deed for recovery of his money which he has lent to the defendant. Moreover, such interim injunction would not adversely affect to the right of the defendant. On the contrary, if in absence of interim injunction, the defendant transfer or alienate his right from the suit property to anybody else, then it will be make more hurdles for plaintiff in smooth and speedy adjudication of the suit. Therefore, this Court is of the opinion that, the balance of convenience is in favour of the plaintiff. In absence of interim injunction, the plaintiff would become helpless. Because this mortgage deed is "english mortgage" as defined type of mortgages in the Transfer of Property Act. Therefore, any alienation or transfer of suit property would fatal to the case of the plaintiff and the plaintiff would have suffer irreparable financial loss. Further, it is also notable that, even after service of summons/notice issued by this Court, the defendant neither appear in person nor through his Ld. Advocate before this Court and raise any objection against the plaint.

Therefore, while three necessary ingredients like prima-facie, balance of convenience and irreparable loss are appears in favour of the plaintiff and against the defendant. Hence, for better preservation and protection of the suit property till final disposal of the suit, interim injunction is required to be granted. Therefore, this Court is of the considered view that, the plaintiff succeeds Issue No.1 to 3 in his favour and accordingly, I answer the **Issue No.1 to 3 in “affirmative”** and for issue no.4, I pass the following order :-

:- FINAL ORDER :-

- (1) The injunction application of Plaintiff under Order 39 Rule 1 and 2 of CPC at Exhibit-5 is hereby ordered to be **allowed**.
- (2) It is hereby order and directed to the defendant to maintain the status-quo in respect to nature, title, possession and character of the suit property. Further, the defendant is hereby restrained from selling, transferring, alienating and creating right in any manner etc. in the suit property till the final disposal of the suit OR till the further order passed by this Court.
- (3) The cost of this application shall follow the costs of the suit.

Pronounced & signed in the open Court today on this **07th** day of February, 2025 at Sannad.

Date: 07-02-2025

Place: Sanand

(Rajeshkumar Batuklal Joshi)
Additional Senior Civil Judge,
Sanand, Ahmedabad (Rural).
Judge Code GJ00952.