Regular Civil Suit No. 06/2024

Order below Exhibit-5

(1) This application is filed by the plaintiff under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908, seeking a temporary injunction restraining the defendants from alienating the suit property in any manner or creating any encumbrance over it until the final disposal of the suit. The brief facts of the case are that suit property bearing Revenue Survey No. 372/8 (Old Survey No. 250), Khata No. 614, is the independent ownership of defendant No.1. Defendant No.1 had agreed to sell the suit property to the plaintiff at the rate of ₹2,35,000/- per vigha, under the terms and conditions mentioned in a registered agreement to sell dated 04/10/2018, vide Registration No. 1179/2018. The plaintiff has paid ₹1,00,000/- by cheque towards the sale consideration in part. Accordingly, privity of contract was established between the parties. As per the agreement, defendant No.1 was obligated to obtain title clearance, convert the suit property into non-agricultural land, and thereafter execute the sale deed within four months from the date of possession of the final plot. The plaintiff is required to pay the balance consideration at the time of execution of the registered sale deed. Defendant No.1 was thus bound to comply with the agreed contractual terms. Meanwhile, defendant No.1 passed away on 25/04/2021. The names of his heirs were subsequently mutated in the revenue record through Entry No. 1703. Hence, the heirs of defendant No.1 are bound by the terms of the agreement. The suit property now entered in

the names of defendants No.1/1 to 1/9 in the revenue records. The plaintiff had requested defendant No.1, and after his demise, his legal heirs, to complete title clearance and conversion of the land into non-agricultural use. However, despite repeated requests, the defendants avoided performance of their contractual obligations. Thereafter, the plaintiff published a public notice on 14/01/2024 in *Divya Bhaskar* newspaper, and thereafter issued a legal notice on 23/01/2024 to the heirs of defendant No.1. Despite such notice, the defendants neither responded nor expressed their willingness to act in accordance with the registered agreement. The plaintiff is always ready and willing to perform his part of the contract. However, the defendants have failed to obtain title clearance, convert the land into non-agricultural land, or accept the balance sale consideration and execute the sale deed in favour of the plaintiff. Hence, the cause of action has arisen for filing the present suit before this Hon'ble Court. It is further contended that the defendants are attempting to transfer the suit property to third parties, which necessitates filing of the present application. The plaintiff submits that he has a prima facie case, that the balance of convenience lies in his favour, and that irreparable loss and injury will be caused to him if injunction is not granted. Failure to grant an injunction would deprive the plaintiff of his lawful and constitutional rights over the suit property. Hence, the plaintiff prays to grant an interim injunction restraining the defendants from transferring, alienating, or creating any encumbrance over the suit

property in any manner until the final disposal of the suit.

(2) The summons and notices were issued to the defendants and were duly served. However, defendants no. 1/1 to 1/9 remained absent. Consequently, the suit proceeded *ex parte* against them.

(3) The learned advocate for the plaintiff argued the application in accordance with the pleadings and prayed for its allowance. On the other hand, no one appeared on behalf of the defendants during the hearing of the application. As the suit proceeded ex-parte against the defendants, arguments were not led by the opposite parties.

(4) This is an application for seeking temporary injunction and there are three basic principles for granting or refusing to grant temporary injunction i.e. prima facie case in favour of the party seeking injunction, Balance of convenience in favour of such person and last there must be a irreparable loss which are likely to be caused to party if injunction is not granted to such person. Thus an injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. In addition to this three basic principles for granting or refusing to grant injunction, the conduct of the person seeking injunction should also be taken into consideration because the granting of injunction is an equitable relief and is drastic or serious order and there are two basic maxims of equity which are important to be considered at the time

of deciding injunction application which are “He who seeks equity must do equity” and “He comes to equity must come with clean hand".

(5) Considering the pleadings and the documents produced along with the suit, it is the case of the plaintiff that defendant No.1 had agreed to sell the suit property to him after converting it into non-agricultural land. The alleged agreement, produced at Mark 3/4, reveals that as per the terms and conditions stipulated therein, the suit property was first required to be converted into non-agricultural land, and thereafter a registered sale deed was to be executed in favour of the plaintiff after obtaining marketable title clearance. The said agreement was executed and registered on 04/10/2018 with defendant No.1, while the present suit has been filed on 17/02/2024. It is further contended that defendant No.1 passed away on 25/04/2021. Although the plaintiff alleges that he had requested defendant No.1 for compliance with the agreement, he has failed to produce any notice or correspondence issued by him during the lifetime of defendant No.1. As per the condition of the agreement, the conversion of the suit property into non-agricultural land and subsequent execution of a registered sale deed were mandatory. Since the said condition has not been fulfilled, the agreement cannot be specifically enforced unless and until such pre-condition is satisfied. The plaintiff has also failed to show any convincing efforts on his part to get title clearance or the conversion process through defendant no.1. The plaintiff has further alleged that the defendants

are attempting to transfer the suit property to third parties. However, no cogent or reliable evidence has been produced to substantiate this allegation. The property has stood in the names of defendants No.1/1 to 1/9 in the revenue records after the demise of defendant No.1. The plaintiff has also failed to produce any public notice or other material indicating that the defendants have applied for, or are in the process of obtaining, title clearance with an intention to alienate the property. Thus, the plaintiff has not been able to establish a prima facie case that the defendants are attempting to transfer the suit property. Till date, there is no reported incident showing any attempt by the defendants to alienate the property. In view of the considerable lapse of time, and the absence of any concrete evidence demonstrating urgency or imminent threat of transfer, this Court is of the opinion that the plaintiff has failed to establish both the urgency of the matter and compliance with the pre-condition of conversion of the land into non-agricultural land.

(6) So in view of the aforesaid discussion and reasons, it transpires to this Court that the plaintiff has failed to establish prima facie case in his favour. And, it is well settled law that if no prima facie case is established, in any case, one may not be entitled to any kind of interim relief even if the aspect of balance of convenience and irreparable injury is in favour of the plaintiff. Furthermore it has been held by the Hon'ble Apex court in para-13 of its pronouncement in "Kashi Math Samsthan v. Srimad Sudhindra Thirtha

Swamy" reported in AIR 2010 SUPREME COURT 296 that

> "*It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted"*.

(7) So in view of aforesaid reasons, the application for temporary injunction is liable to be rejected. Hence, this court declines to grant an application for temporary injunction filed by the plaintiff. Under such circumstances, I hereby pass the following order in the interest of justice.

ORDER

1. The application filed by the plaintiff vide Exhibit-5 is hereby dismissed.
2. Cost shall be the cost in the cause of the suit.

Signed and pronounced in the open court on today's date.

Date: 25/08/2025
Place: Dholera

(Mr. Piyush Navinbhai Lakhani)
Principal Civil Judge
Dholera, Dist. Ahmedabad(Rural)
Judge Code GJ01565