

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE, BHARUCH,**:: ORDER BELOW EXH.5 IN SPECIAL CIVIL SUIT NO.
3 OF 2023 ::**

(1) This is an application filed by the plaintiff for seeking temporary injunction under Order-39, Rule-1 & 2 read with Section-151 of the Code of Civil Procedure, 1908 with appropriate other relief which court think fit, that the property mentioned in para-01 i.e. the land bearing Block/Survey No.99/1/1 admeasuring 01-36-00 (Hec. Arey – Sq. Mtrs.) Account No.2215 situated at village Tavra, Ta. & Dist. Bharuch. Out of this, the northern part of the land (area 0-45-33 or 4,533 sq. meters) is the subject of this case and will be referred to as the "disputed property." should not be transferred, altered, or encumbered in any way by the defendants no. 1 to 3 or their agents, till further orders from the court.

(2) The brief facts of the application are that :

The plaintiffs, farmers from Amreli, entered into a registered agreement (Banakhat) to purchase 4,533 sq. meters of agricultural land in Tavra village, Bharuch from the father/husband of Defendants No. 1 to 3. The agreed sale price was Rs. 56.66 lakhs, of which Rs. 7.5 lakhs was paid upfront. The remaining was to be paid upon title clearance and land partition.

A registered agreement was executed on 24 July 2018, stipulating that it would remain in effect until the final sale deed was executed. Defendants No. 4 to 10 are joint holders of the land but are added as parties only for formality; no relief is sought from them. The defendants have not completed the sale despite the agreement and payment. The plaintiffs had entered into a property agreement with the defendants but the

agreement was not fully executed. The plaintiffs issued a legal notice when they learned that the defendants were attempting to sell or place a charge on the property. To prevent this, they filed an interim injunction application, stating they have a strong case, would suffer irreparable damage, and are willing to fulfill their obligations under the agreement. They request the court to stop the defendants from transferring or encumbering the property until the case is resolved.

(3) The summon/notice were issued against the defendants and it is duly served to the defendants.

The defendant Nos. 1 to 3 appeared through their Ld. Advocate filed written statement at Exh. 29, wherein, they have contended that suit and the injunction application are false, unlawful, and made in bad faith. The plaintiff is trying to exploit their situation after their father's death to claim agricultural land. The plaintiff is not a farmer and cannot legally claim rights over the agricultural land in question. They categorically deny all of the plaintiff's claims. Thus, the defendants request to dismiss the plaintiff's suit and interim application. They have further contended that the plaintiff's claim is time-barred, being filed nearly 4.5 years after the agreement date & the suit is not filed in proper legal form, and the relief sought is not legally justifiable. The suit suffers from procedural errors, such as: Mis-joinder and non-joinder of causes of action, and Mis-joinder of parties. There is no genuine cause of action; the case is fabricated. The property value is deliberately understated, and the court fee paid is insufficient, making the claim invalid. They have further contended that the defendants reject the plaintiff's claims regarding the alleged agreement to sell, the land location, and the ownership status. They state that these are unproven claims, and it's plaintiff's duty to prove them. They have further contended that the Banakhat is not binding to all defendants. Only the deceased father/husband of Defendants (1)–(3) may have been involved (if at all). Defendants (4)–(10) were not signatories and wrongly included in the

case. The suit thus suffers from mis-joinder of parties. Dispute Over Payment and Validity of Agreement: The alleged agreement for Rs.5.66 crore is not admitted, and further facts about payment are yet to be shown or proven. The plaintiff must prove the execution, terms, and legality of the banakhat. Moreover, the defendants nos. 1 to 3 strongly deny all claims related to the alleged sale agreement (Banakhat), including: Payments Made – Deny receiving Rs.7.5 lakh or any agreed remaining amount of Rs.49+ lakh. Execution of Agreement – Deny that any Banakhat was ever signed or registered. Land Partition & Demarcation – Deny any agreement to partition or separate land area. Revenue Record Changes – Deny being involved in or asked to change revenue records. Registered Sale Deed – Deny agreeing to execute any registered sale deed. Knowledge – Claim to have no knowledge of any such agreement or actions taken under it. They have further contended that all these claims are fabricated by the plaintiff for the purpose of filing this suit, and the entire matter is unfounded. They have further contended that they have no knowledge of agreement or ever entering into or knowing about the alleged Banakhat (agreement to sell) or any land partition. They have further contended that the land is in joint property and the plaintiff has no legal right to sue. Therefore, the suit is without valid legal grounds or cause of action. Defendants deny the existence, execution, and enforcement of the alleged sale agreement (Banakhat). They deny any knowledge of land partition, payments, or related dealings. They have further contended that the suit is barred by limitation, has no cause of action, and involves improperly joined parties and issues. The plaintiff has no prima facie case, and claims of irreparable harm or balance of convenience are unfounded. Hence, they have prayed for dismissal of injunction application. If granting the interim injunction would harm the legal rights of the defendants. The plaintiff stands to lose nothing and has filed the case without real grounds. Therefore, they have prayed to reject the injunction application of the plaintiff.

(4) The defendant nos. 4 to 10 appeared through their Ld. Advocate and filed their written statement at Exh. 27, wherein they have contended that they were unaware of the alleged property agreement (banakhat) until they were named as parties in this suit. They explicitly deny the validity or acceptance of the alleged agreement. They also deny knowledge of the portion of the land being claimed in the north side of Survey No. 99/1/1. They affirm that all responsibility to prove the claims lies with the plaintiff. They have further contended that the agricultural land in question is jointly owned and governed by a family understanding that no portion will be sold or transferred to outsiders. They claim the banakhat (agreement to sell) was done without their knowledge or consent, making it invalid. They emphasize that entering the plaintiff's name in official records based on this agreement would harm family unity, legal rights, and emotional interests. They assert that any harm to the plaintiff is self-inflicted, due to not involving all joint owners. Therefore, they request that the plaintiff's relief (especially Relief No. 1) be rejected by the court. They have further contended that they had no involvement in the plaintiff's agreement and were forced to appear in court unnecessarily, causing them loss of time and money. They seek legal costs to be imposed on the plaintiff. They contended that the plaintiff, being an experienced businessman, should have known that all joint owners must consent to any land transaction. However, the plaintiff intentionally bypassed the other joint owners and made an agreement with only one. They contended that the plaintiff is attempting to take advantage of his own wrongdoing, and therefore, his request for injunction and rights over the land (Relief No. 1) should be rejected to protect the present and future legal rights of the joint owners.

(5) The plaintiff has submitted documents vide mark-3/1 to 3/11 along with suit and temporary injunction application.

(6) Heard the Ld. Advocate of the plaintiff as well as Ld. Advocate of the defendants.

(7) The Ld. Advocate of the defendant nos. 4 to 10 has filed written argument at Exh.30, wherein, he has submitted that the head of the defendant nos. 1 to 3 Narpatbhai executed a Banakhat (agreement to sell) in favour of the plaintiff for the land mentioned in the suit, which is joint ownership and interest. The defendant nos. 4 to 10 did not know about this Banakhat before the filing of the present suit. Therefore, if their land is obstructed due to any injunction or stay order of the court, then despite being innocent, defendant nos. 4 to 10 will suffer loss. He has further submitted that rights arising from the clear revenue record are likely to be violated, therefore, Exhibit – 5 should be rejected. At the time of executing the Banakhat (agreement to sell), if the plaintiff had included them joint holders, then – due to their family settlement – such a so-called Banakhat document would not have existed at all. He has further submitted that the suit land, according to the revenue record, is still recorded jointly even today. The Plaintiff with the intention of trapping the defendants and extracting a large sum of money has created the existence of this so-called and invalid Banakhat at that time. The plaintiff and defendant nos. 1 to 3 have been prolonging this case until now in the settlement, but no settlement has been possible because the plaintiff is maliciously determined to extract a more money. If the plaintiff really wanted a settlement, then as per the alternative relief in Paragraph-8 of the plaint, the plaintiff could have settled with defendant nos. 1 to 3. However, the plaintiff is not willing to do so. Based on the alleged Banakhat, the plaintiff has filed this suit with the intention of falsely implicating the defendant nos. 4 to 10. Defendant nos. 4 to 10 and by any means, attempting to take possession of the share of the land. Therefore, they have prayed to dismiss the application Exh.5.

(8) This is an application for seeking temporary injunction and there are three basic principles for granting or refusing 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 injunction, the conduct of the person seeking injunction should also be taken in to 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 consider 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”.

(9) In view of the above facts, following points arose for determination of this application.

:: P O I N T S ::

- (1) Whether plaintiff prove Prima-Facie case?
- (2) Whether plaintiff prove that balance of convenience is in their favour?
- (3) Whether plaintiff have irreparable loss?
- (4) What order?

(10) My answers to the above points are as under.

Point No. 1 In Affirmative.

Point No. 2 In Affirmative.

Point No. 3 In Affirmative.

Point No. 4 As per final order

:: F I N D I N G ::

(11) For the sake of convenience and to avoid repetition of fact all the points have been discussed together.

(12) I have carefully gone through the entire material on record in the light of the submissions made by the learned Advocate, for the parties.

(13) Considering the material on record, it appears to this court from the document filed by the plaintiff vide mark 3/1 to 3/11 that, mark-3/1 is Village form no. 7, the defendant nos. 4 to 10 are owners & occupiers of the land bearing Block/Survey No. 99/1/1 of village Tavra, Ta. & Dist. Bharuch. The Mark-3/2 is village form no. 6 (Hakpatrak), shows that in presence of Nanjibhai Savjibhai the land of Block/Survey No. 235 paik 1 (100), 352 paik 1 (100), 368 paik 1 (100) of village Shekhpipariya, Ta. Lathi, Dist. Bharuch was partitioned to the plaintiff – Ashokbhai Nanjibhai Sheladiya as legal heir of late Nanjibhai vide mutation entry no.2377 dated 03/11/2007. The Mark-3/3 is also village form no.6 (Hakpatrak) shows that Narpatbhai Hirabhai Gohil died on 12/08/2020, hence his legal heir namely Lakshmiben Narpatsinh Gohil has been mutated vide mutation entry no.12511 dated 18/09/2022 in the revenue record. The Mark-3/4 is the receipt of postal department. The Mark-3/5 is the office copy of notice, shows that the Ld. Advocate of the plaintiff has issued notice to the defendant nos. 1 to 3. Mark-3/6 to 3/8 are the copies of online tracking report of postal department. Mark-3/9 is the receipt of registration. Mark-3/10 is the copy of Index-2, shows that the Narpatbhai Hirabhai Gohil, who was husband of defendant no.3 had executed the sale deed in favour of Plaintiff - Ashokbhai Nanjibhai Sheladiya agriculture land of Block/Survey No. 99/1/1 admeasuring 01-36-00 (Hec. Arey. Sq. Mtrs.) of village Tavra, Ta. & Dist. Bharuch. Mark-3/11 is the agreement to sale, shows that husband of the defendant no.3 – Narpatbhai Hirabhai Gohil has executed agreement to sale in favour of the plaintiff before the Sub-Registrar Bharuch of the agricultural land of Block/Survey No. 99/1/1 admeasuring 00-45-33 (Hec. Arey. Sq. Mtrs.) of village Tavra, Ta. & Dist. Bharuch.

(14) Plaintiff has further stated that he has decided to take possession of the said property for consideration of Rs.56,66,250/- dated 24/07/2018 and he has paid an amount of Rs.7,50,000/- being dated

04/05/2018 & 01/06/2018 to the father of the defendant nos. 1 & 2 and husband of the defendant no.3 and remaining was to be paid upon title clearance and land partition. A registered agreement was executed on 24/07/2018, stipulating that it would remain in effect until the final sale deed was executed. Despite this agreement and partial payment, defendant nos. 1 to 3 have failed to proceed with the execution of the final sale deed. Then after notice was issued by the plaintiff to the defendant nos. 1 to 3 on 12/01/2023. Moreover, plaintiff was and is agree to comply the agreement entered between both the parties. He is ready to pay the due amount to the defendants. It is only due to the fault of defendants, that the execution of the agreement is not implemented. Further, he stated that he has prima facie case, balance of convenience is in his favour, and if present application not allowed by this court then it will cause great hardship to plaintiff which cannot be compensated by monetary relief. Hence, prayed to grant interim injunction in his favour.

(15) This is an application for 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. And 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. Apart from three basic principles, the court is also required to see the conduct of party seeking equitable relief of temporary injunction.

(16) Prima facie case and balance of convenience both are in favour of plaintiff as he has paid Rs. 50,000/- vide Cheque No.000063 dated 04/05/2018, Rs.1,00,000/- vide Cheque No.0000677, & Rs.6,00,000/- vide Cheque No.000068 of Bank of Baroda and plaintiff is ready and willing to pay remaining amount of Rs.59,16,250/- after title

clearance of the property, but defendant nos. 1 to 3 fails to implementation of agreement & defendant nos. 1 to 3 not co-operate to plaintiff and fails to perform their promise. It is the plaintiff who will be suffered from loss which cannot be repairable by compensating in terms of money at present if the injunction is refused, as against no irreparable loss to the other side if it is granted.

(17) So in view of the aforesaid reasons, it transpires to this court that the plaintiff has establish prima facie case in this case to go for trial by showing his right over the suit property and by raising triable issues to be investigated by the court on the basis of evidences led by the parties of this suit. Further the balance of convenience is also in favour of the plaintiff since plaintiff's having right over suit property and the plaintiff will suffer irreparable loss if temporary injunction is not granted in his favour. So, this court is firmly on the opinion that the plaintiff is entitle to equitable remedy of temporary injunction. So, in view of the aforesaid reasons and discussion, this court inclines to grant an application for temporary injunction filed by the plaintiff. Under such circumstances, I hereby pass following order in the interest of justice.

:: ORDER ::

(1) The application for temporary injunction filed by the plaintiff is hereby allowed.

(2) The defendant Nos. 1 to 3 are hereby ordered to be restrained from alienating, transferring, mortgaging, leasing the suit property or dealing therewith in any manner by themselves or through their agents, servants, representatives or anybody acting under them be granted qua the suit property bearing Block/Survey No.99/1/1 admeasuring 01-36-00 (Hec. Arey Sq. Mtrs.) towards the share of

northern direction admeasuring 00-45-33 (Hec. Arey Sq. Mtrs.)
4533 Sq. Mtrs. Account No.2215 situated Village Tavra, Ta. & Dist.
Bharuch agricultural land by any means till further order of the court
or final disposal of this suit.

(3) Cost shall be the cost in the cause of the suit.

Signed and Pronounced in open Court on today i.e. 25th day of August,
2025 at Bharuch.

Date : 25.08.2025.
Place: Bharuch.

(Anilkumar Shamjibhai Gohel)
Principal Sr. Civil Judge,
[Code No. GJ01154]
Bharuch.