

Order below Exhibit - 5

1. It is the case of the plaintiff that she is the owner of the immovable property situated at village Paniyadra of taluka Wagra, district Bharuch, bearing Survey No.44 admeasuring 0-68-79. It is the say of the plaintiff that she is in the possession of the above property and is doing agricultural activities on the said land. It is further pleaded that the plaintiff agreed to sell the said land to the defendants at Rs. 8,00,000/- per acre, hence the total value of the property came to Rs.-13,74,800/-.

2. It is further pleaded that it was decided that the defendants would pay to the plaintiff the sum of Rs. 13,74,800/- but defendant No.1 told the plaintiff that if in the Registered Sale Deed, the said amount is shown as consideration amount then he will have to pay stamp duty on the above amount, instead if in the Registered Sale Deed the consideration amount is shown according to the Jantri that is the government value then the stamp duty will be of much less amount. It was further promised by the defendants that rest of the amount would be paid once the revenue entry is mutated in their name. Accordingly, the plaintiff had executed Registered Sale Deed No. 2057 duly registered before Sub-Registrar Wagra on 05/08/2015. It is further pleaded that out of the consideration amount of Rs. 13,74,800/- the defendant has only paid Rs. 2,00,000/- to the plaintiff. It is further pleaded that the defendants have not even paid to the plaintiff the amount shown in the Registered Sale Deed that is Rs.4,98,000/- hence the plaintiff has brought the present suit to declare that the Registered Sale Deed No.2057 dated 05/08/2015 with respect to

the suit property is false, illegal and null and void. It is further prayed that the defendants be restricted from transferring suit land by way of gift, mortgage or in any other manner and also not to create any encumbrance on the said land and lastly the plaintiff has asked for perpetual injunction that the defendants do not disturb the possession of the plaintiff.

3. Along with the suit the plaintiff has filed the present application under the provision of Order 39, Rule 1-2 and Section 151 of C.P.C. wherein plaintiff has reiterated what has been stated in the plaint and prayed for following temporary reliefs: -
 - (i) That defendant Nos. 1 to 3 do not make any change in the revenue record.
 - (ii) Defendant Nos. 1 to 3 or other agent, servant, etc., do not alienate the property in favour of third person.
 - (iii) The defendant Nos. 1 to 3 and other agent, servant, etc., do not disturb the settled possession of the plaintiff over the suit land.
 - (iv) Any other relief which the court deems fit.

4. On the service of summons the defendants appeared through their learned advocate Mr. D.G. Solanki and have filed their written statement vide Exhibit-10, wherein the defendants have denied all the allegations made by the plaintiff. Over and above it, defendants have taken the contention about lack of jurisdiction of the present court. It is further contended by them that they have purchased the suit property by way of a Registered Instrument and have paid Rs.4,98,000/- as consideration amount by way of cheque. The plaintiff has also acknowledged before the notary public that the possession of the suit property has been handed over to the defendants hence the defendants are in possession of the suit property. It is further contended that the plaintiff was also

duly served a notice under Section 135 (d) of Bombay Land Revenue Code wherein the plaintiff has not taken any objection against the revenue entry being mutated in the name of defendants. In view of the above contentions the defendants have prayed to reject the application under Exhibit-5.

5. Heard learned advocate for the plaintiff Mr. N.R. Parmar and the learned advocate for the defendants, Mr. D.G. Solanki. Learned advocate for the plaintiff has submitted that the possession of the suit property still lies with the plaintiff. To substantiate above contention, the plaintiff has produced affidavit of the persons who are having their land in the vicinity of the disputed property. He has further submitted that on perusing document at mark 11/6 and 11/7 it is evident that on the date of execution of the Registered Sale Deed, the defendants did not have sufficient balance in their account. It is further contended that the defendants are in the habit of doing such illegal activities and thereby snatching the properties of the true owners. It is further argued that if the injunction as prayed for is granted the defendants will not face any loss, hence at least the relief of status quo should be granted.
6. As against this, the learned advocate for the defendants has submitted that the defendants are claiming right over the suit property by way of a Registered Sale Deed, the said sale deed was executed by the plaintiff in presence of the Sub-Registrar and the sale deed bears the signature of Sub-Registrar also. It is also submitted that the plaintiff did not object to the Revenue Entry being mutated in the name of the defendants when the notice under Section 135 (d) of Bombay Land Revenue Code was served on the plaintiff. It is further stated that at the stage of interim relief application, the plaintiff cannot be granted final relief hence

in view of all the above contention he has prayed to reject the application. In support of these arguments the learned advocate for the defendants has relied on following judgments.

S. No	Citation	Ratio held
1.	1982 (2) GLR, page no. 213 Ratnaben Prabhahai vs. Tulsidas V. Patel	
2.	1963 GLR, page no. 587 Zandaram Johitaram vs. Prahladrao Vitthalrao.	Prima facie case must be established before granting injunction.
3.	AIR 1992, Allahabad page no.254	Principles of granting of injunction stated. (Para 17)
4.	2007 (1) GLR page no. 79 Jayantibhai Mafatbhai Patel vs. Dilipbhai Becharibhai Patel1	Courts to examine minutely merits of the case to ascertain whether the plaintiff has prima facie case or not. (Para 15)
5.	Vishnu Ramtaji Thakore v/s Amit Pransukhlal Patel (AIR 2007 Guj. 133)	Court is required to consider prima facie case and balance of convenience while deciding interim injunction application.
6.	Jasoda Indralal Vadhva v/s Hemendrabhai Kakulal Vyas 2009(2) GLH 437.	Court has to see whether there is plausible case of the plaintiff while considering injunction application.

7. As the plaintiff has sought interim injunction pending the final disposal of the suit it is apposite to discuss general principles of granting and non-granting of the interim injunction application.

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 lastly 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 these three basic principles for granting or refusing to grant 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 who seeks equity must come with clean hands".

8. Applying the above principle to the facts of the present case it is undisputed that the plaintiff has sold the disputed property in favour of the defendant Nos. 1 to 3 by virtue of a Registered Sale Deed No. 2057 dated 05/08/2015 duly executed before Sub-Registrar, Wagra. Perusing the said Registered Sale Deed which has been produced by way of Mark 3/5 by the plaintiff it is evident that the plaintiff admitted that she has received a consideration amount of Rs.4,98,000/-. The said amount was paid by defendant Nos. 1 to 3 to the plaintiff in equal share that is Rs.1,66,000 by each of the defendant. Further the said amount was paid through cheque. In connection to it when the documents at Mark 11/6, 11/7 and 11/8 are seen, these documents are the copy of the bank statements of the defendant no. 1, 2 and 3 respectively. It transpires that each of the defendant's account, the amount of

Rs.1,66,000 has been credited in favour of plaintiff, hence according to above bank's statements the plaintiff has realised the cheque issued in her favour, and thereby has received the consideration amount as shown in the registered sale deed. This casts a doubt about the version of the plaintiff that she has received consideration amount of only Rs. 2,00,000/- out of the total consideration amount. It would be farfetched to believe the plaintiff's version that though she has not received the full consideration amount she would sign the registered sale deed and subsequently did not take any objection even when the suit land was being mutated in the name of defendants. Further, when the plaintiff has parted with the suit property by executing the Registered Sale Deed till the Registered Sale Deed is set aside the beneficiaries of the Registered Instrument cannot be robbed off their right which flows from the Registered Instrument. I have to my benefit judgment rendered by Hon'ble Supreme Court in the case of Rattan Singh, Inder Pal Singh v/s Nirmal Gill (Civil Appeal no. 3681/2020) wherein Hon'ble court held as under

(32) The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in Prem Singh and Ors. v. Birbal and Ors., (2006) 5 SCC 353.

In view of the judgment cited above there is a presumption of genuineness when the document is registered.

9. Further Hon'ble Supreme Court in para-13 of its pronouncement in "Kashi Math Samsthan v. Srimad Sudhindra Thirtha Swamy" reported in AIR 2010 SUPREME COURT 296 held 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”.

10. Applying the above principle to the facts of the case it is evident that the plaintiff has come with a plea which goes against what has been stated in the Registered Sale Deed. The plaintiff has not disputed the fact that the instrument is not executed by her. In addition to it the defendant's rights flow from a registered sale deed. It would be unjust to devoid them of such rights especially when defendants have shown that they have paid consideration amount through bank transaction. Though the plaintiff has claimed that she is in the possession of the suit property in absence of any prima facie evidence to believe the said version according to the maxim 'possession follows title' there is no reason to disbelieve the possession of the defendants over the suit property. Thus, balance of convenience and ir-repairable injury factors are also in favour of the defendants. Further the plaintiff has concealed the fact that she has received the consideration amount by way of bank transaction. This conduct on the part of the plaintiff dis-entitles her to claim equitable relief of injunction. In view of the above reasons and legal position as none of the ingredients necessary to grant injunction are in favour of the plaintiff. Hence, I pass following order under the application.

:- Final Order:-

- 1 The present application is hereby rejected.
- 2 Cost of the application shall follow the cost of the suit.

Pronounced and signed in open court today on 16th of March, 2021.

Date:- 16/03/2021

Place:- Vagra.

(V. P. Mehta)
Additional. Civil Judge,
Vagra.
UIC :- GJ01538

//Steno-A.S. Mishra//