

Order below Exhibit-05

Ld. Advocate for the plaintiff	Mr. Y. M. Patel
Ld. Advocate for the defendant	Mr. S. Y. Chokiwala

1. Read the application along with the documents on record.

Heard Ld. Advocate for both the respective parties.

The Ld. Advocate for the plaintiff has submitted that they have filed the present suit against the Defendants for Specific Performance of Contract under the Specific Relief Act and for other reliefs, wherein it is submitted that the plaintiffs, reside with their family at Village: Tankari Bandar, Taluka: Jambusar, District: Bharuch, and earn their livelihood there and the plaintiffs, are the legal heirs of the deceased Abdul Kadar Patel (the purchaser of the suit property). Further the plaintiffs have submitted that the husband of plaintiff no. 1 and the father of plaintiff nos. 2 to 5, Shri Abdul Kadar Patel, along with Sadik Mahmad Ali Bhagat, had acquired the agricultural land described in the schedule below (the "Suit Property") for the purpose of cultivation from the original owner, Shri Abdul Isha Suleman (resident of Village: Tankari Bandar, Taluka: Jambusar, District: Bharuch), in the presence of witnesses in the year 1981. Further the plaintiffs have submitted that the original owner of the agricultural land mentioned in the plaint, Shri Abdul Isha Suleman, had voluntarily and with his free consent given the said land for cultivation to Abdul Kadar Patel and Sadik Mahmad Ali Bhagat and he had also handed over peaceful and actual possession of the land accordingly, accepting the peaceful and actual possession, Abdul Kadar Patel and Sadik Mahmad Ali Bhagat had been cultivating the suit property under their tillage rights (Khed-Haq) since the year 1981 thereafter, in the year 1987, Sadik Mahmad Ali Bhagat relinquished his tillage rights (Khed-Haq) in the said land. It is further submitted that discussions took place between the original owners of the land, Abdul Isha Suleman and Abdul Kadar Ahmad Patel, regarding the sale of the said land and during these discussions, the original owners decided to sell the suit property to Abdul Kadar Ahmed Patel on a permanent basis and at that time, the sale consideration was fixed according to the requirements of the seller, and the full amount of the consideration was duly paid. Further it is submitted that Abdul Isha Suleman, the original

owner of the land, held the necessary discussions with Abdul Kadar Ahmad Patel regarding the sale of the land and granted his necessary consent for the sale of the said land and the price of the consideration for the sale of the said land was fixed in the presence of witnesses and as Abdul Isha Suleman required funds and a sale consideration of Rs. 14,800/- was fixed where the purchaser, Abdulkadar Ahmed Patel, paid the full consideration amount in the presence of witnesses and the seller, Abdul Isha Suleman, accepted the full consideration at that time, and no amount remains outstanding and the suit property has been sold and regarding the same, an agreement with delivery of possession was executed between Abdulkadar Ahmed Patel and Abdul Isha Suleman, transferring all rights, titles, and interests to the purchaser and the said agreement/sale contract was executed in the presence of witnesses on 07.11.1992, on a stamp paper of Rs. 10, under the specific conditions mentioned below.

Description and Details of the Land Sold:

Village Name	Old Survey No.	Old Area	New A/c No.	New Survey No.	New Area
Tankari Bandar, Ta. Jambusar, Dist.: Bharuch	555 1+2+3 (Soniwadu Farm)	1.41.66	329	797	1.43.66

Bounded by:

East: Land of Mahmad Asmal.

West: Road.

North: Adjacent Survey Number.

South: Land of Mahmad Shikari.

Terms and conditions regarding the sale of the scheduled property:

"The land situated at District Bharuch, Sub-District Jambusar, Village Tankari Bandar, Survey No. 555/1+2+3, is sold to Abdul Kadar Ahmed Patel and the purchaser shall be entitled to the produce, and possession has been handed over to the purchaser as of today, i.e., 07.11.1992".

Further it is submitted that as there is an existing encumbrance (bojo) in the Tankari Society, a registered deed cannot be executed currently however, upon obtaining clear title, a registered sale deed shall be executed and from today, Abdul Kadar Ahmed Patel is the Power of Attorney (Absolute Owner) of this land; Abdul Isha Suleman and his heirs,

executors, or administrators have no right, title, claim, or interest remaining.

Further it is submitted by the plaintiffs that the agricultural land was sold permanently to the husband/father of the plaintiffs, Abdul Kadar Ahmed Patel and he possessed the possessory title of the suit property since 1981 as a tiller (khed-hakk) and, based on the sale agreement dated 07.11.1992, continued in peaceful and direct possession and he managed & cultivated the land during his lifetime and following his demise on 10.01.2023, the peaceful and direct possession of the suit property devolved upon the plaintiffs, as his direct legal heirs. The plaintiffs further submitted that regarding the names appearing in the revenue records, defendant no. 1, Mehrunissa Abdul Haqq Adam, has never created any hindrance, interference, or objection regarding the peaceful and direct possession to date, nor has she initiated any legal proceedings to recover possession until today, expressed SILENT Consent and Admission of Physical Possession of ABDUL KADAR AHMED PATEL and his Legal Heirs regarding the peaceful and direct possession of the suit property held by Abdul Kadar Ahmed Patel and subsequently by his heirs however, recently the defendants are attempting to sell the suit property to a third party and on 12.06.2023, at approximately 10:00 AM, while the plaintiffs were performing agricultural work on the land, defendants no. 2, 3, and 4, without any legal right and with mala-fide intent to cause a dispute, used abusive language against the plaintiffs, acted high-handedly, and threatened that they would not allow them to enter the field henceforth and would kill them if they did therefore, the plaintiffs have filed the present suit for specific performance of contract and injunction. The Ld. Advocate for the plaintiffs has further contended that the plaintiffs have strong prima-facie case and the aspects of balance of convenience and irreparable loss is also in their favour and hence, the present application is filed for getting interim injunction against the defendants and if the injunction is not granted in favour of plaintiff, then plaintiff will have to get involved in multiplicity of proceedings and will incur huge loss upon the plaintiff which cannot be compensated in terms of money and hence, it is prayed that the present injunction application is required to be granted.

2. The summons of the present suit were served upon the defendants and the defendants appeared before the court through their counsel and the defendants filed their written statement vide Exh. 11 wherein the defendants have mainly denying the facts of the

plaintiffs' plaint & injunction application and they stated that their true and correct facts is that the suit property has been under the independent ownership, possession, and occupation of defendant no. 1 since the period of 1973–1977 and that since defendant no. 1 is a woman and moved to Bharuch following her marriage, the day-to-day management and supervision of the property has been handled by defendant no. 2, who is her biological brother. Further the defendants submitted that the property is now designated as New Block No. 797, was consolidated from the erstwhile Survey Nos. 551/1, 551/2, and 551/3 and the defendants maintain that they have consistently cultivated the land, harvested its produce, and have currently sown a cotton crop for the present year. Further the defendants submitted that the defendant no. 3 is the nephew of defendant no. 1 (son of her brother) and defendant no. 4 is a local villager who assists in the oversight of the property on behalf of defendant no. 1 and the defendants assert that the plaintiffs have no locus standi or legal interest in the property and are attempting to illegally encroach upon defendant no. 1's independent estate.

Further the defendants vehemently submitted that the stamp paper for the purported agreement was not purchased by either the buyer or the seller, but rather in the name of a third party, Fatmaben, widow of Yakub Mahamad and a physical inspection of the document suggests it was drafted in its entirety by a single individual using the same pen, and that all signatures appear to have been executed by the same person. Further the defendants have submitted that the suit has been filed after a delay of 31 years, which the defendants argue is a gross violation of the Statute of Limitations and the said document was never registered, rendering it inadmissible and legally void under the prevailing statutes. The defendants further submitted that the father of defendants no. 1 and 2 (and grandfather of defendant no. 3) migrated to the United States in 1997–98 to reside with his son and remained there until his natural demise on 03.11.2022, and never returned to India during that interval and crucially, the defendants point out that while their father always signed documents using his full name in the Gujarati script, the impugned Sale Agreement bears a signature in the name of "A. I. Patel." The defendants argues that this is a clear fabrication by an unauthorized third party and request the Court to initiate criminal proceedings for the use of forged documents. Further the defendants conclude that the plaintiffs' suit and the application for an interim injunction lack merit and legal foundation

and prayed that the Hon'ble Court dismiss the suit and the injunction application with costs and grant any other relief deemed appropriate in the interest of justice.

3. The plaintiffs have filed their written arguments in support of Injunction Application vide Exh. 18.

Heard the Oral Arguments of defendants at length.

4. In view of the allegations by the plaintiff side, following points arise for my determination under the present application.

- (i) Whether the plaintiff proves that he has a prima facie case ?
- (ii) Whether the plaintiff proves that the balance of convenience is in his favour ?
- (iii) Whether the plaintiff proves that there is an irreparable loss likely to be caused to the plaintiff if injunction order is not granted ?
- (iv) What order and relief ?

5. My findings thereon are as under ;

- (i) In Negative.
- (ii) In Negative.
- (iii) In Negative.
- (iv) As per Final Order.

Reasons :-

As all the points for determination of the present application are connected with each other, hence for the sake of brevity and convenience and for avoiding repetition of facts they are here discussed jointly.

Read the application as well as perused the records of the suit. As the plaintiffs have sought interim injunction during the pendency 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 an irreparable loss which are likely to be caused to

party if injunction is not granted to such person. Thus, an injunction being an equitable relief and 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 considered 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".

Keeping in mind the above settled legal position and considering the same in light of the facts of the present suit, it seems that the plaintiff has filed the present suit for specific performance of contract dated 07.11.1992 as well as injunction against the defendants. Further, it seems that according to plaint, the sale agreement was executed by the deceased father of defendant no.1 in the year 1992 and present suit has been filed by the the plaintiffs against the legal heirs of Abdul Isha Suleman in 2023. Looking to the averments made in the injunction application, it seems that the plaintiffs have filed the present suit for getting Specific Performance of Contract from the legal heirs of Abdul Isha Suleman. The plaintiffs have filed the present suit along with documentary evidence vide Mark 3/1 to Mark 3/11 and on perusal of Mark 3/1 which is original sale agreement executed on 07.11.1992 between Abdul Isha Suleman & Abdul Kadar Ahmed Patel and on perusal of the impugned agreement it seems that it is an unregistered and hand written sale agreement. On perusal of the plaint it also seems that the plaintiffs have claimed the title of ownership and possession through this sale agreement however, both the original parties Abdul Isha Suleman & Abdul Kadar Ahmed Patel have passed away in year 2022 & 2023 respectively and the legal heirs Abdul Kadar Ahmed Patel have field the present suit for Specific Performance of Contract against the legal heirs of Abdul Isha Suleman. Further on perusal of the sale agreement vide Mark 3/1 is seems that it is written on Rs. 10 stamp paper and executed on 07.11.1992. The plaintiffs further relies upon the documentary evidence vide Mark 17/1 to Mark 17/56 and on perusal of the same are the payment receipt of tax paid at gram panchayat. The names running on the tax receipt is Mehrunisa Abdul Haqq Adam and tax was paid by Abdul Kadar Ahmed. It seems that the

plaintiffs have produced these tax payment receipts to prove their possession however, on mere producing the tax payment receipts does not mean to prove the possession of the suit property is lying with the plaintiffs. Further it seems from the record that the plaintiffs have not produced any documentary evidence which proves that the possession of the suit property is with the plaintiffs and at the time of filing the present suit the plaintiffs have not filed the application for court commission to ascertain the status of actual possession of the suit property. At this stage the submission made by the Ld. Adv. for the defendants that the present suit is filed in 2023 for getting the Specific Performance of Contract executed on 07.11.1992 against the defendants and the present suit is filed after a long period of execution of sale agreement and it is barred by Law of Limitation and this court considers that there is some force in the said submission of the defendants. Therefore, the arguments of the Ld. Advocate for defendants is quite acceptable and has strong substance that the aspect of Prima-Facie Case, Balance of Convenience and Irreparable Loss are not in favour of the plaintiffs. Hence, looking to all the averments and documentary evidences, the plaintiffs have miserably failed to prove the three basic elements for getting injunction.

In view of the above discussion, the plaintiffs have failed to prove prima facie case, balance of convenience and irreparable loss which are required to be proved for granting injunction order in their favour. Hence, I answer point of determination nos.1 to 3 In Negative and pass following Final Order under point no.4.

- : Order : -

1. The present application of the plaintiffs vide Exh.-05 for injunction against the defendants is hereby Rejected.
2. No order as to costs.

Pronounced & signed today in an open court on this 22nd day of April, 2026.

Date :- 22/04/2026
Place :- Jambusar

(A. D. Rao)
Principal Senior Civil Judg, Jambusar,
UIC: GJ01480