

**ORDER BELOW EXHIBIT 5 IN REGULAR CIVIL SUIT  
NO.82/2021**

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**ADVOCATE :**

- Ld. Advocate Mr. R.T SHAH for plaintiffs.
  - Ld. Advocate Ms. I.D PATEL for defendants.
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1. Read the application and the reply filed thereof. Perused the documents on records.

2.The present application has been given by the plaintiffs under Order 39 R. 1 & 2 for getting interim injunction. wherein the plaintiffs respectfully submit that they are in lawful possession, occupation, and enjoyment of agricultural land situated at village Sanjali, Taluka Jhagadia, District Bharuch, bearing old Survey Nos. 633 admeasuring 2 acres 11 gunthas and 634 admeasuring 1 acre 11 gunthas, total admeasuring 3 acres 26 gunthas, now bearing new Survey No. 718 and Khata No. 40

admeasuring Hectare 1-32-00, that the said land was originally owned by Chandubhai Gumanbhai and others who sold the same to the plaintiffs' father Kabhai Rayjibhai on 25-02-1970 for Rs. 6,000/- under an agreement to sell and handed over possession, and the entire consideration was paid by 28-03-1971, though the registered sale deed remained unexecuted due to mutual trust, that since then the plaintiffs' father and thereafter the plaintiffs, being his legal heirs, have been in continuous, peaceful, and uninterrupted possession, cultivating the land, paying land revenue, and presently raising banana crops irrigated through a borewell. That recently due to increase in land value, the defendants have developed dishonest intentions to dispossess the plaintiffs, have refused to execute the sale deed despite repeated requests, have threatened the plaintiffs with dire consequences, and have even misused

provisions of the Land Grabbing Act by initiating proceedings before the Collector, Bharuch, to which the plaintiffs have already responded, that the plaintiffs have a strong prima facie case, the balance of convenience lies in their favour, and they will suffer irreparable loss if the injunction is not granted, whereas no prejudice will be caused to the defendants if it is granted and therefore the plaintiffs pray that pending the suit the defendants be restrained from interfering with the plaintiffs possession, entering the suit land, creating any third-party rights, transferring or encumbering the property, obstructing cultivation, or causing any damage thereto and such other reliefs as deemed fit be granted in the interest of justice.

3.The defendants were served with the notice and defendants had filed there reply vide

**Exhibit 16** The defendants respectfully submit that the plaintiffs' suit and injunction application are false, illegal, and not maintainable, being barred by limitation, estoppel, delay and laches, non-joinder of necessary parties, and provisions of the Transfer of Property Act, and hence liable to be rejected at the threshold. While the description of the property is not seriously disputed, the defendants assert that they are the lawful owners and possessors, and deny the alleged agreement to sell dated 25-02-1970 as false, void, time-barred, and unenforceable, contending that no registered sale deed was executed within the prescribed period and that the plaintiffs had no lawful possession, the defendants state that their predecessors had taken back possession around 2002-2003 after returning money, and thereafter cultivated the land, and that due to cordial relations, in 2014 the land was temporarily given to the plaintiffs sons for

cultivation on a sharing basis, with joint efforts and equal division of produce, which continued for several years until 2021 when the defendants decided to cultivate the land themselves but were obstructed and threatened by the plaintiffs who thereafter illegally retained possession, the defendants further state that they had approached the Collector under the Gujarat Land Grabbing Act, though the application was rejected, and have filed a separate civil suit for recovery of possession, and therefore deny all allegations of continuous possession and cause of action, submit that the plaintiffs are not entitled to specific performance or any equitable relief, and pray that the suit and injunction application be dismissed with costs.

4. I have gone through the record and pleadings of the parties. whereas the plaintiffs have filed their written arguments vide exhibit 26. To

adjudicate the application following points for determination may arise.

1. Whether the plaintiffs show their prima facie case?
2. Whether the Balance of convenience is in favor of the plaintiffs?
3. If injunction would not be granted than irreparable injury will cause to the plaintiffs?
4. What order?

5. My answer regarding points for determination:

[1] In Affirmative.

[2] In Affirmative.

[3] In Affirmative.

[4] As per final order.

**Findings:**

6. As all the issues are interrelated and interconnected, it is in the interest of justice to deal with all the issues together.

10. As per order 39 R 1 and 2 of the Code of Civil Procedure, the temporary injunction can be granted by a court in the following cases:

*(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or*

*(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,*

*(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.*

The power to grant a temporary injunction is in the discretion of the court. This discretion however, should be exercised reasonably,

judiciously and on the legal principles. Injunction should not lightly grant as it adversely affects the other side. Generally, before granting the injunction, court must satisfied about the following aspects namely, prima-facie case, irreparable injury and balance of convenience.

7. The first rule is that the applicant must make out a ***prima facie case*** in support of the right claimed by him. The court must be satisfied that there is a bona fide dispute raised by the applicant, there is strong case for trial which needs investigation. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima-facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not

whether that was the only conclusion which could be arrived at on that evidence.

8. Existence of the prima facie case alone does not entitle the applicant for a temporary injunction, but the applicant must satisfy the court that he will suffer *irreparable injury* if the injunction as prayed for is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

9. Third condition for granting interim injunction is that the *balance of convenience* must be in favor of the applicant. In other words, court must be satisfied that the comparative mischief hardship or inconveniences which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

10. I am not preventing myself from quoting celebrated and remarkable observation by *Lord Diplock* in *American Cyanamid Co. V/s. Ethicon Ltd*

**1975(2) WLR 316**, *"The object of the interlocutory injunction is to protect the plaintiffs against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favor at the trial. The court must weigh one need against another and determine where the balance of convenience lies."*

#### **11. Prima Facie Case**

The plaintiffs base their claim on an Agreement to Sell dated 25-02-1970 vide-Mark **3/1**, asserting that their father, Kabhai Rayjibhai, paid the full consideration of Rs. 6,000/- by 1971

and obtained possession. To substantiate their claim of continuous possession, the plaintiffs have produced revenue receipts Mahesol slips vide Marks **3/21 to 3/37**. Conversely, the defendants contend that the agreement is void and time-barred. However, for the purpose of a temporary injunction, the court must look at the factum of physical possession. While the defendants' names appear in the Record of Rights produced vide Marks **3/2 to 3/18**, the defendants themselves have made a admission in their reply vide exhibit-16 that the land was given to the plaintiffs' sons for cultivation in 2014 and that the plaintiffs "illegally retained possession" from 2021 onwards. This admission, coupled with the plaintiffs' production of tax receipts, suggests that the plaintiffs are in actual physical occupation of the land. Under the law, even a settled possession –even if challenged as unauthorized–requires due process for eviction. Therefore, a triable issue exists regarding the nature and continuity of the

plaintiffs' possession, establishing a prima facie case.

## **2. Balance of Convenience and Irreparable Loss**

The second and third point which is to be decided while deciding the injunction application is regarding the balance of convenience and irreparable injury. The court must be satisfied that the comparative mischief hardship or inconveniences which is likely to be caused to the plaintiffs by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it. The defendants, while claiming ownership, have admitted they are not currently in physical control of the land and have already initiated legal recourse via the Land Grabbing Act which was rejected and a separate suit for recovery of possession. Since the defendants have already sought a legal remedy for possession, the balance of convenience shifts in favor of the plaintiffs to protect the current state of the property until the court can

determine the validity of the sale agreement and the legality of the possession. Granting the injunction preserves the status quo ante, whereas refusing it would invite a breach of peace. Whereas irreparable loss refers to an injury that cannot be adequately compensated by monetary damages. The plaintiffs are utilizing the land for agricultural purposes, which is their primary source of sustenance. The loss of standing crops and the seasonal right to cultivate land cannot be easily quantified in purely financial terms, as it involves the displacement of a family from land they claim to have occupied for over five decades. Furthermore, if the defendants were to create third-party rights or encumber the property during the pendency of the suit, it would lead to a multiplicity of proceedings and may render any final decree in favor of the plaintiffs infructuous. In contrast, the defendants' interests can be protected by an expedited trial. Thus, the risk of irreparable injury to the

plaintiffs outweighs the temporary restriction placed upon the defendants.

13. Taking the above-said discussions into consideration, I am of the view that the plaintiffs have shown their *prima facie* case, balance of convenience and irreparable injury in their favor. Therefore, in the interest of justice, I pass the following order.

**:: O R D E R ::**

- The application vide exhibit 5 for temporary injunction against defendants is hereby Allowed.
- The defendants, their agents, and servants are restrained from interfering with the plaintiffs peaceful possession and cultivation of the suit property and are further restrained from alienating, transferring, or creating any third-party interests in the suit land until the final disposal of the suit.
- No order as to cost.

Regular Civil Suit No.82 of 2021

(Order below Ex.5)

Signed and Pronounced in this open court on this  
10<sup>th</sup> day of APRIL 2026.

10/04/2026

Jhagadia

**(Jaiveer Singh Rathore)**

Add. Civil Judge

Jagadia

GJ01695