

GJBK070005742023

RCS/70/2023

**BRAHAMAN DHANJAYBHAI MANSANGBHAI**  
**Vs.**  
**BRAHAMAN LAKHIRAM VAJRAM**

**ORDER BELOW EXH-5**

1. Heard Ld. Ad. Mr. B. P. Padhiyar for the plaintiff and Ld. Ad. Mr. N. R. Solanki for the defendant. Perused the record of the case.
2. The present application has been preferred by the plaintiff for interim injunction u/O-39 R-1, 2 r/w. section-151 of the Code of Civil Procedure, for an order of interim injunction restraining defendants from entering into the suit property in possession of plaintiff, and also from alienating the suit property till the final disposal of the suit.
3. Facts of the suit are based on the premise that the father of the plaintiff had purchased the suit property situated at Rabdi-Padar village bearing revenue survey no. 53 (Old no. 172) admeasuring hectare 1-08-25 (referred to as **suit land** hereinafter) vide a registered sale deed no. 1029/2008 dated 30/03/2008, which was executed by the defendant nos. 1 to 3 and father of defendant nos. 4 to 6 and since then the suit land has been in the possession of plaintiff. It is pleaded by the plaintiff that the entry for the said sale deed was rejected by the circle officer vide endorsement dated 17/02/2009 which was never communicated to the father of the plaintiff. At present, name of the defendant no.1 only is entered in the revenue record Form no. 7/12. Father of plaintiff namely Mansangbhai Rudabhai died on 16/09/2019, therefore in order to make mutation entry of plaintiff and other legal heirs in revenue

record, plaintiff obtained the revenue record, at that time only he came to know that the entry has been rejected. Further, defendant no.1 took objection against the entry no. 871, and the said entry was dismissed which was challenged by the plaintiff before the revenue authorities, however the plaintiff was unsuccessful and the dismissal of the said entry was upheld. Further, defendant has also filed a complaint against the plaintiff under provisions of Land Grabbing Act and a *panchnama* was carried out by the revenue authority. Defendant has clearly stated in the said proceedings that the deceased father of plaintiff had cheated them to get the sale deed registered and wrongfully got the possession of the land, and also that the possession of the land is with plaintiff no. 1 to 3. In aforesaid facts, plaintiff has brought the suit for declaration and perpetual injunction.

4. Upon filing of the present suit, it was registered as regular civil suit and process came to be issued to defendants along with urgent show cause notice which were duly served upon defendants, and they have caused their appearance through their learned advocate and also submitted Written Statement at Exh-18 and 25 wherein the defendants have denied all the averments of the plaint and further submitted that the defendant nos. 1 to 3 and deceased father of defendant nos. 4 to 6 have never sold the suit land to father of the plaintiff, and defendants are in possession of the suit land. Further, it is contended that deceased Ganapatbhai alone had mortgaged the suit land for the amount of Rs. 21500/- for the period of 4 years in favour of Suthar Valjibhai on 15/05/2020 but without consent of defendant nos. 1 to 3, and again on 18/04/2017 deceased Ganapatbhai mortgaged the suit land for Rs. 27100/- without knowledge of defendant no. 1 to 3. Therefore, defendant nos. 1 to 3 redeemed the said mortgage on 29/03/2008 and repaid the amount to Suthar Valjibhai, and as the Gomtiben Vajeram had repaid the mortgage money, names of the defendant nos. 1 to 3

only had been mutated in entry no.299. Further, it is contended that under the guise of the said mortgage redemption, on the same day Brahman Mansengbhai Rudabhai made the sale deed on 29/03/2008 without consideration and without knowledge of the defendant nos. 1 to 3. As such, Brahman Mansengbhai Rudabhai was not bona fide purchaser.

5. Ld. Ad. Mr. B P Padhiyar, appearing for the plaintiff has vehemently submitted that the sale deed in favour of the plaintiff has neither been challenged nor signature in the said sale deed has been denied by defendants. The said sale deed is in force till date. It is also argued that the period of 3 years of limitation under section-58 only begins to run from the date of knowledge, and admittedly the plaintiff got the knowledge of mutation of entry in 2022 only, therefore the suit is well within time. It is also submitted that the registered sale deed in favour of plaintiff is in force and not challenged by the defendant by way of suit for cancellation of sale deed or by way of counter claim in the present matter. In such circumstances, it is urged that the plaintiff has strong prima facie case, balance of convenience also lies in his favour and if the interim injunction as prayed for is not granted, he shall suffer irreparable loss. At last, it is submitted that the plaintiff should be protected by the interim relief till the disposal of the suit.
6. Ld. Ad. N R Solanki appearing for the defendant has submitted that the plaintiff has brought this suit after 14 years from the date of the impugned mutation entry no. 307 dated 17/02/2009 on the basis of sale deed no. 1029/2008. He argued that the period of limitation is 3 years, and therefore suit is apparently time barred. Further, it is contended that plaintiff has not exhausted all the remedies available under revenue jurisdiction, therefore also, the suit is barred by the provisions of section-11 of the Revenue Jurisdiction Act. Further, it is submitted that when the suit is clearly barred by the law, no interim relief can be

granted in favour of plaintiff. Further, it is argued that the plaintiff has not come before the court with clean hands inasmuch as the alleged sale deed in favour of the plaintiff is itself doubtful for the reason that the same is executed by 4 persons where only 3 persons were holding the suit land. Moreover, it is submitted that the factor of possession while deciding the interim injunction application is significant, and plaintiff has failed to establish his possession over the suit land, despite that the plaintiff has not even applied for local inspection of the suit property. In sum up, it is argued that the plaintiff has not valid title though valid transfer, and therefore the present application be rejected with heavy cost.

7. Following issues emerge for consideration in order to adjudicate the present application;

**Issues involved: -**

- A. Whether the plaintiff proves that he has strong prima facie case in his favour ?
- B. Whether the plaintiff proves that balance of inconvenience lies in his favour ?
- C. Whether the plaintiff proves that he will suffer irreparable loss if interim injunction is not granted ?

**Answers to issues and Reasons therefor: -**

8. For the sake of brevity all these issues are discussed hereinafter altogether as they are inter-connected with each other.
9. It is pertinent to note here that the relief as prayed for by way of this application is discretionary and equitable in nature and can be granted only if the party seeking it successfully establishes all the above issues in his favour. Principles governing the aspect of interim injunction have been propounded by the Hon. Apex Court time and again, and at

the cost of saying the known principles I would propose to say that the powers of court are discretionary in nature which can be exercised in appropriate cases where the court is of the prima facie opinion that all the necessary requirements have been established by the party concerned.

10. Having heard both the side, and having perused the record, it appears that the dispute in the present matter pertains to the registered sale deed no.1029/2008 dated-30/03/2008 in favour of plaintiff. Relying upon the said sale deed, the plaintiff claims his ownership and possession over the suit land, whereas the defendant raised contention that the said sale deed was executed by cheating and that too under the guise of the mortgage deed. However, the defendant has not brought the suit for cancellation of the said sale deed, nor did defendant has filed counter claim in the present suit.
11. What amounts to prima facie case is nowhere defined in the Code. Therefore, in common parlance of the term it can be said that the relief of the party is based on the foundational facts which are supported by material on record at present. Therefore, at this juncture, the prime consideration is not to decide the case on merits but to arrive at *prima-facie* opinion whether the party seeking relief has in his favour all the issues viz. "prima facie case", "balance of convenience" and "irreparable loss".
12. Therefore, at present, *prima facie* factum of the registered sale deed no. 1029/2008 dated-30/03/2008 cannot be ignored. Though, defendant relied upon the endorsement made by the circle officer that the sale deed cannot be executed by 4 persons when the property is in name of 3 persons. It is not in dispute that the said sale deed was executed by the 4 person despite the fact that only 3 persons were recorded as a holder of the land in revenue record. But defendants who

were parties to the deed have never challenged the said deed on any count till date. However, whether the said deed was a valid transfer or not would be the subject matter of trial. But at this juncture, a duly registered sale deed should be given prima facie weightage. Further, it is also not in dispute that the defendants have initiated proceedings under the provisions of the Land Grabbing Act, wherein the defendants have stated that plaintiff is in possession of suit land which can be seen from the documents adduced by the plaintiff at Mark-4/17. Thus, when the possession of the plaintiff over the suit land has been well established on record by documentary material, and when the defendants themselves made a statement that the possession lying with plaintiff, it is in the interest of justice that the party in possession of the suit land should be protected till further order. It is also argued on behalf of the defendant that the nature of possession should be taken into consideration as it is not *de jure* possession. However, the said contention would be open for defendant to contest at the time of trial, but as of now when the plaintiff is in possession of the property would be at greater hardship than defendant if an order of *status quo* is not granted in favour of plaintiff. In view of the aforesaid peculiar set of facts in the case on hand, the plaintiff has prima facie case to go for trial, the balance of convenience and irreparable loss also lies in the favour of plaintiff.

13. Therefore, in view of the aforesaid discussion and reasons, I answer all the issues in favour of plaintiff and I deem it appropriate to protect the plaintiff by way of interim order. Hence, following order in the interest of justice;

**-- ORDER --**

- A) The present application at Exh-5 preferred by the plaintiffs is hereby allowed in part.

- B) Defendant is hereby directed to maintain *status quo* with respect to the suit property situated at Rabdi-Padar village Ta. Wav, Dist. Banaskantha bearing revenue survey no. 53 (Old no. 172) admeasuring hectare 1-08-25 till final disposal of the suit or till further order.
- C) Cost shall follow the costs of the cause.

**Order signed and pronounced today on 08<sup>th</sup> July, 2024 in open court.**

Date : 08-07-2024

**MR.T.R.GHONIYA**  
**PRINCIPAL CIVIL JUDGE & J.M.F.C**  
**WAV- GJ01561.**

Visit [ecourts.gov.in](https://ecourts.gov.in) for updates or download mobile app “eCourts Services” from Android or iOS