

Order Below Exh. 5**in RCS No. 32 of 2018.**

(1) The brief facts of the case of plaintiff are that, the plaintiff has filed the present suit for declaration of permanent injunction on the grounds that, the defendant no. 4 in capacity of a power of attorney of defendant no. 1, 2, and 3, has sold the residential plot no. 33 admeasuring 150.42 Square Meter to the plaintiff, vide registered sale-deed no. 244/96 dated 23/01/1996 on consideration of Rs.11,330/-, which is registered before the Sub-Registrar office. Then after, the defendant no.5 has sold the same plot to defendant no.6.

(2) When the plaintiff has approached his land for construction the defendant no.6 has obstructed him and said that he is owner of plot. Therefore, the plaintiff has told him that the plot has sold to me earlier and defendant no.6 has no right in the plot. So, the defendant no.6 has threatened the plaintiff that he will sale the property to some other person therefore, the plaintiff has filed the present suit and sought for the relief as mentioned in para. 11 of the plaint.

(3) Along with the suit the plaintiff has filed the present application below exh. 5 for seeking the interim-injunction on the ground that, during the pendency of the suit if the suit property is disposed or alienate or transfer in any way to any other person then the plaintiff would suffered irreparable loss. The plaintiff has purchased the suit property on valid consideration therefore, plaintiff has prima-facie case. The defendant has sold the same

property to some other person therefore, there is malafide intention on the part of the defendant since beginning hence, the balance of convenience is in favour of the plaintiff. Considering all the above submissions prayed to pass the order of interim-injunction, that during the pendency of the suit, the defendant no.6 doesn't sale, transfer, alienate or by any other way disposed of the property.

(4) Upon due service of summons/notice, defendant nos. 5 and 6 appeared and filed the written statement vide exh. 23 wherein they have denied the averments of the application and stated that there is no sale-deed as stated by the plaintiff of dated 9/12/1996. Further name of the plaintiff is not entered into the revenue records of the disputed property. Further the defendant no.5 has validly sold the property to defendant no.6 therefore, defendant no.6 has absolute right over the suit property. Further submitted that the plaintiff has not initiated construction work within 3 years from the date of permission therefore, plaintiff has no right to filed the present suit. The defendant has further stated that he has purchase suit property on valid consideration in good faith . There is no other place for defendant to reside with his family therefore, considering all the above submissions prayed to reject their application.

(5) The plaintiff has filed the counter affidavit vide exh. 42 wherein denied the written statements of the defendant and adhered to his statements of the plaint.

(6) Considering the rival contentions of both the parties and hearing the learned advocates of both sides and upon careful perusal of record, following points arise for determination of the present application.

1. Whether the plaintiff has prima-facie case for seeking the interim injunction ?
2. Whether the balance of convenience is in favour of the plaintiff ?
3. Whether the plaintiff would suffer the irreparable loss in absence of interim-injunction ?
4. What order ?

(7) Considering the rival contentions and submissions made by both the parties and careful perusal on record, I proceed to answer the above mentioned points as follows. For the reasons following thenafter:

1. Affirmative.
2. Affirmative.
3. Affirmative.
4. As per order.

Reasons

1) Herein present case along with his oral submissions the plaintiff has produced the copy of the sale-deed dated 23/01/1996 which is xerox copy of sale-deed of disputed property survey no. 754 plot no. 33 admeasuring 105.42 Square Meter. It is written in the said document that the plaintiff has purchased the land from original defendant nos. 1 to 4, the defendant no.4 has executed the sale-deed as power of attorney to

defendant no. 1, 2 and 3 and the same is registered before the Sub-Registrar office vide registration no. 244 dated 25/01/1996. The plaintiff has further produced the sale-deed executed by defendant no. 5 in favour of defendant no. 6 which is on dated 4/03/2013 in that sale-deed also the same property (i.e) the property of revenue survey no. 754 plot no. 33 admeasuring 150.42 Square Meter is sold to defendant no.6. Therefore, considering both these documents it appears that the defendant has entered into the transaction with different person at different point of time with regard to the same disputed property therefore, the rights and interest of the parties and validity these sale-deeds can be decided only after giving opportunities to the parties and leading evidence and after full fledged trial. At this juncture this Court cannot go into the merits of the documents (i.e) the sale-deeds produced with respect to the disputed property but as discussed above, looking to these documents at this stage it appears that the defendant has entered into the transaction of property with two different persons with respect to the same property. Therefore, it appears that during the pendency of the suit, the suit property should be preserved from alienation or transfer. So that the plaintiff should not have to entered into multiplicity of proceedings. At this juncture, I would like to take into consideration the provisions of Order 39 Rules 1 and 2 which provides that the Court can pass the order of interim-injunction if the suit property is in danger of alienation or wasted. The plaintiff and the defendant has further produced various documents of power of attorney and notice of revocation

of power of attorney therefore, also it appears that the present suit involves material question as to the rights and interest of parties which can be decided only after leading full fledged evidence and after the trial. But so far as the suit property is concerned it required to be preserved till the Court decide the rights and interest of both the parties based on disputed sale-deed and hence, I tend to hold that the plaintiff has prima-facie case to that aspect.

2) As discussed above the defendant no.5 entered into the various transaction with respect to the suit property. Adjudication and merit of the same is pending before this Court and which can be decided only after leading the evidence. But at present the submission of the plaintiff is that the defendant is threatening to sell the disputed property and considering the record also appears that the defendant no. 5 has entered into various transaction therefore, the suit property is required to be preserved till final disposal of the suit. Considering the record and circumstances the plaintiff would suffered multiplicity of proceedings in absence of interim-injunction. On the other hand, the defendant has no such hardships, if the interim-injunction is passed. Therefore, the balance of convenience is in favour of the plaintiff.

3) As discussed above the suit property is required to be preserved till final disposal of the suit. The defendant has tendency to entered into various transaction therefore, if the suit property is disposed before final adjudication of suit then there

will be multiplicity of proceedings and plaintiff may have to entered in the various litigation which would cause greater hardship to the plaintiff. Further, it also transpires that the plaintiff has entered into transaction in the year 1996 and paid the consideration for suit property therefore, if the suit property is not preserved the plaintiff would suffer irreparable loss.

4) Considering the above discussion it appears just and proper that the suit property is preserved till final disposal of the suit. Therefore, I proceed to pass the following final order with respect to the application.

Order

1. The application is hereby allowed.
2. The defendants are hereby restricted to alienate, transfer, sale or by any other way dispose the property till final disposal of this suit.
3. No order as to cost at this juncture.
4. Pronounced in open court.

Date:- 17/03/2025.

Botad.

(Ankur Naginbhai Patel)

Additional Senior Civil

Judge.

Botad.

Code No.GJ00917.