

: Order below Exh. 5 in Regular Civil Suit No. 588 of 2019 :

01. The plaintiff has filed present suit for cancellation of sale deed, redemption of mortgage and to get permanent injunction.
02. The brief facts leading to the filing of the present suit are that the property bearing S.No. No.114, situated at village : Sangapur, Tal. Ranpur, Dist. Botad and S.No.70/1 and 70/2 situated at village : Deradi (hereinafter referred to as the 'Suit Property') is an ancestral property of the plaintiff and the said property is undivided. It is further stated by the plaintiff that the plaintiff is possessing the above land and carrying the agricultural activity. It is further stated that since he was in need of money, he has obtained money from the defendant no.1 - Gambhirsinh Chudasama and has been repaying the amount from his agricultural produce. It is further stated that the said amount is obtained in the presence of defendant no.3 and in this regard, defendant has obtained thumb impression of the plaintiff in some blank papers. It is further stated that thereafter the amount of Rs. 50,000/- is remained outstanding and therefore, as per the say of the defendant no.1, the plaintiff has mortgaged the land in

question and executed a deed. It is further stated that the defendant no.1 in connivance with the defendant nos. 2, 3 & 4 have executed a wrongful sale deed under the guise of mortgage deed. Thus, the defendants have made a forged document of sale deed by cheating and forgery. It is further stated that the plaintiff has initiated revenue litigations and has filed the present suit seeking relief of cancellation of mortgage as well as declaration that the said sale deed is forged and null & void. Further, to seek the relief of permanent injunction.

03. Alongwith the said suit, plaintiff has filed application below Exh.5 for seeking interim injunction on the ground that the disputed suit property is plaintiff's ancestral property and the plaintiff is carrying the agricultural activity and used to earn his livelihood. That the defendants in connivance with each other, have made a forged document and wrongful sale deed under the guise of mortgage deed, therefore, the plaintiff has prima facie case, balance of convenience is in favour of the plaintiff and the plaintiff would suffer irreparable loss because if the defendants by taking undue advantage of forged sale deed and will sell the property in question then the plaintiff will lose his valuable land and he will have to enter into multiple proceedings to protect his

land, therefore, all the three components for granting interim injunction is in favour of the plaintiff and accordingly prayed to allow the relief of interim injunction that pending the trial of the suit, defendants do not convey or transfer or part with the disputed property in favour of any other person.

04. Upon the due service of notice, the defendants appeared through their learned advocate and filed written statement at Exh.84 inter-alia contended that the averments and contentions narrated in the application by the plaintiff are wrongful and concocted. The defendants have executed a lawful sale deed by paying the due amount of consideration and there was no such transaction of mortgage as alleged by the plaintiff. It is further stated that the defendants have got the sale deed registered before the competent authority and the plaintiff has affixed is thumb mark in the sale deed in question in the presence of competent authority and therefore also, the averments of the plaintiff are wrongful and concocted. It is further contended that the plaintiff has initiated forge and wrongful revenue proceedings against the defendants and filed the present suit after the lapse of 10 years of transaction with an ulterior motive to defraud the

defendants and accordingly, prayed to reject the suit and present application of Exh.5.

05. Considering the rival submissions of the respective parties, following issues arise for the determination of the present application:

- (1) Whether the plaintiff has prima facie case ?
- (2) Whether the balance of convenience is in favour of the plaintiff ?
- (3) Whether the plaintiff would suffer irreparable loss, if the present application rejected ?
- (4) What order ?

06. My findings on the above said issues are as under :

- (1) In the negative.
- (2) In the negative.
- (3) In the negative.
- (4) As per final order.

:: REASONS ::

07. Plaintiff first-of-all, alleged that the defendants under the guise of mortgage a deed, has executed wrongful sale deed and thereby cheated the plaintiff. In this regard, plaintiff has produced the copy of sale deed bearing registration no.870 at mark 3/1. Upon going through the said sale deed, it is written that the disputed property is sold to the defendants, there is no condition as to the

effect of the mortgage in the said sale deed. Therefore, it is clear that the plaintiff has entered into the transaction with the defendants though, it is alleged by the plaintiff that the defendants have executed sale deed under the guise of the mortgage transaction, it is notable that such allegations are subject matter of evidence and can be decided after leading full-fledged evidence in the matter. At present, on the basis of mere oral allegations, it cannot be said that any kind of fraud was done by the defendants more particularly, when the document/sale deed is registered before the competent authority. When, a registered sale deed is executed and the plaintiff is alleging contrary to that sale deed then he must have to prove his allegations with strong prima facie evidence and mere, oral allegations are not sufficient to that effect. The plaintiff further relied upon the extract of revenue record i.e. village form no.7/12 and 8/A which is produced at mark 3/2 wherein the name of the plaintiff is written. It is notable at this juncture that the mutation of revenue entries are in dispute and at present pending before the competent authority. It is on record that both the parties are contesting the revenue proceedings, therefore, at present mere the name of plaintiff is not sufficient to hold the

prima facie that there was forgery or alleged cheating as is stated by the plaintiff. Further, plaintiff has relied upon the papers produced for showing that the plaintiff has obtained the loan on the said disputed property, it is notable at this juncture that, such Co-operative society give the loan to the person on the basis of revenue record and when there is name of plaintiff in revenue record, he might have obtained certain amount of loan from the Co-operative Society, but that fact is not sufficient to prove that the plaintiff is actually in possession of the land in question. It is significant to note that, if it is stated by the plaintiff that he is in possession on the land, hence, the possession is very important factor as regard to the prima facie case of the plaintiff. The plaintiff must have to show certain concrete thing regarding his possession likewise bill of produce or any bill of agricultural activity which can show sufficiently that the plaintiff is in possession of land and carrying agricultural activity but mere names in revenue record which is in dispute, are not sufficient to believe prima facie possession. Therefore, considering the above discussions, it appears that the plaintiff has failed to prove prima facie case that the defendants have executed wrongful sale deed by cheating

and forgery under the guise of mortgage deed. As discussed above, such allegations are the subject matter of evidence and can be decided after leading full-fledged evidence, therefore, the plaintiff has failed to prove the prima facie case.

08. It is on record that alleged transaction is prima facie a sale transaction. The plaintiff will have an opportunity to prove his case after leading evidence, but at this juncture, when a written sale deed which is registered before the competent authority is on record, it cannot be believed on mere oral allegations that the forgery alleged by plaintiff, has been committed. Therefore, defendants when obtained the property by way of sale deed granting interim injunction, without going into evidence, would cause greater hardship to the defendants than the plaintiff, accordingly, balance of convenience is also not in favour of the plaintiff.

So far as the elements of irreparable loss is concerned, it is notable that the plaintiff will have all the opportunity to prove his case and after trial, if the plaintiff will succeed in proving his case, then he may get relief as sought by him but as discussed above at present plaintiff has failed to prove alleged forgery prima facie. Further, the

balance of convenience is also not in favour of him and it is not come on record that the plaintiff would suffer any kind of loss which is irreparable in nature or which cannot be compensated/measured in terms of money and therefore, the element of irreparable loss is also not in favour of the plaintiff and accordingly I tend to hold that the plaintiff is not entitled to get the relief as sought in the application at Exh.5 and hence, following order is passed:

-: ORDER :-

1. The present application below Exh.5 is hereby rejected with no order as to cost.

Pronounced in the open Court today on this 6th Day of November, 2024 at Botad.

BOTAD

DATE: 06/11/2024.

IMR..

Sd./-

(ANKUR N.PATEL)

Additional Sr. Civil Judge,

BOTAD

CODE NO. GJ00917