

VIRINGBHAI JOTIBHAI CHAREL AND OTHERS**VS.****SHEKH MOHAMADBHAI AHMADBHAI AND OTHERS**

ORDER BELOW EXH-5

1. Heard Ld. Ad. Mr. K. H. Khandelval for the plaintiff and Ld. Ad. Mr. V. B. Purohit for the defendant nos. 10 to 15. Perused the record of the case. None appeared for the defendant nos. 1 to 9.
2. The instant application has been filed by the plaintiff seeking relief of interim injunction restraining the defendants from alienating the suit property situated at village- Itadi, of Sanjeli Taluka, bearing revenue survey no. 452, admeasuring hectare 1-21-14 (in short referred to as “**suit land**” hereinafter).

Short Facts:-

3. Short facts of the the present application may be summarised as under;
 - I. That the defendants mortgaged the suit land in favour of late father of plaintiff in the year 1985 for rs. 9051/-. Thereafter, defendants, on their will, agreed to sell the suit land for consideration amount rs. 94051/- in favour of late father of the plaintiff on 05/06/1994 and also agreed to payment of rs. 45000/- a month after Diwali and the remaining rs.40000/- after Diwali. The said agreement between the parties was reduced into writing in presence of Panchas. Then after, as per written deed on 05/06/1994 and on 27/11/1995, the payment of rs. 45000/- was also made.

- II. However, plaintiff's father asked for acceptance of remaining rs. 40000/- and to execute a sale deed, but the defendants did not paid heed to such requests. Therefore, Jotibhai Malabhai, plaintiff's father, filed a suit bearing RCS no. 26/1996 in the honourable Court of Jhalod, and he also filed a suit bearing RCS no. 31/1996 against the Ramsingbhai Dhirabhai and Ramsingbhai Badiyabhai in the same Court. RCS no. 31/1996 came to be dismissed for default on 17/03/2016, whereas RCS no. 26/1996 was transferred to newly established Court in Sanjeli and the same was renumbered as RCS no. 2/2016 which came to be rejected after trial. An appeal being RCA no. 9/2020 was filed against the said order and judgment in RCS no. 2/2016 which is pending at the stage of final arguments.
- III. Therefore, the defendants have already accepted rs. 54051/- against the amount of consideration but defendants have not executed sale deed as per agreement. Plaintiff also served a legal notice upon defendants on 26/07/2021 and plaintiff is ready to pay remaining amount rs. 40000/-. Defendants are also preparing to alienate the suit property to third party so as to jeopardize the valuable rights of the plaintiff.
- IV. In such circumstances, plaintiff has submitted that the he has strong prima facie case, balance of convenience lies in the favour of the plaintiff and if interim injunction as prayed is not granted in favour of the plaintiff he shall suffer irreparable loss. Therefore, it is prayed that the present application be allowed.

Written Statement:-

4. After due service of the process of the court, defendant nos. 1, 3 to 9 appeared before the court but failed to file their Written Statement in due time hence their right was closed vide order

dated 28/01/2025. Whereas, defendant nos. 10 to 15 have filed their Written Statement at Exh-30, wherein they have denied all the averments of the suit and further contended that;

- I. The judgment and decree passed in RCS no. 26/1996 has attained finality in view of the disposal of appeal being RCA no. 9/2020 withdrawn. Therefore, the plaintiff cannot bring a fresh suit for the same cause of action.
- II. Further, it is contended that if the property is jointly owned, the party seeking performance is duty bound to secure consent of all the co-owners. Therefore, every co-owner's explicit consent is necessary for the sale to be specifically performed.
- III. Further, it is submitted that the plaintiff must demonstrate due diligence and a proactive approach in obtaining all necessary consents in addition to fulfilling readiness and willingness as per section 16 (c) of the Specific Relief Act, 1963.
- IV. Moreover, it is contended that the suit is barred by the law of limitation as the time limit for claiming specific performance of a contract is three years as prescribed by article 54 of the Limitation Act, 1963.
- V. It is also submitted that the plaintiff has not affixed sufficient stamps on the deed based on which the present suit has been filed. Therefore, suit is barred by section 17(1)(b) of the Registration Act, 1908, as it is mandatory to register a document for any immovable property sale where the sale price of consideration is rs. 100 or more. Failure to register such a document results in it not being admitted as evidence in the court and the buyer may risk losing legal ownership protection.

VI. On aforesaid counts, defendant has prayed to reject the application seeking interim relief with costs.

5. I have heard arguments of both the side and considering the facts case and submissions made before this court following issues emerge for consideration in order to adjudicate the present application;

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

Answers to issues and Reasons there for: -

6. For the sake of brevity all these issues are discussed hereinafter altogether as they are inter-connected with each other.
7. It is pertinent to note here that the relief as prayed for by way of this application is discretionary and equitable in nature and it can be granted only if the plaintiff 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, 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 plaintiff.
8. Having heard both the side, and having perused the record, it appears that the plaintiff is before this court claiming specific performance of the contract. It is the case of the plaintiff that an agreement to sell dated 05/06/1994, with respect to the agriculture land bearing revenue survey no. 452 of the village Itadi of Taluka

Sanjeli, Dist. Dahod, was executed between Jotibhai Malabhai Charel as purchaser and Ahmedbhai, Aiyubhai as vendors of the suit property for the sale price Rs. 94051/- of which rs. 9051/- was paid in cash by the Jotibhai Malabhai to the vendors. Plaintiff submitted that the said agreement signed by the parties and witnesses. Further, it is submitted that on 27/11/1995, rs. 45000/- was paid by way of a cheque vide another agreement. Thus it is claim of the plaintiff that defendants have acknowledged rs. 54051/- and promised to execute registered sale deed in favour of plaintiff by accepting remaining amount of sale rs. 40000/-.

9. The cause of action, as per the pleadings of the plaintiff, arisen on bunch of the different facts commencing from the date of agreement i.e. 05/09/1994, then date of disposal of the RCS no. 26/2996 i.e. 28/02/2018 and then the date of issuance of notice i.e. 26/07/2021 and the date of another notice i.e. 12/06/2023. However, there is no clear pleading in the entire suit with respect to the cause of action for the present suit. Further, it is pertinent to note that mere issuance of notice for specific performance of the contract after pretty long time does not *ipso facto* give rise to a fresh cause of action to bring the suit. Even if we go through the agreement to sell dated 05/06/1994, it explicitly contains a condition that the remaining payment of rs. 40000/- to be made after Diwali, and if the purchaser fails to pay the remaining amount, earnest money would be forfeited to the vendors and the agreement shall be deemed to be cancelled.
10. The plaintiff has also pleaded that their late father Jotibhai Malabhai filed a suit being RCS no. 31/1996 in the Civil Court Jhalod which came to be dismissed for default on 17/03/2016. However, plaintiff has not adduced any record of the said suit in the present case. Plaintiff has not pleaded as to whether they have tried to restore the said suit on its file by availing legal remedy

available under the law. Considering the said fact it appears that the cause of action arisen in the year 1996 which is evident from the pleading of the plaintiff himself. Otherwise, Jotibhai Malabhai would not have filed the suit being RCS no. 31/1996. Therefore, considering factum of unexplained delay on the part of the plaintiff, I do not find force in the submission that the cause of action has arisen when the plaintiff issued a notice to defendants. Further, plaintiff has adduced affidavits sworn by the defendant before the honourable civil court of Jhalod in case of RCS 31/1996, wherein they have asserted that they have sold the property to the Jotibhai Malabhai and handed over the possession. However, the same can be considered at the time of the evidence, but at this juncture the said affidavits cannot replace the *sine quo non* requirements for the grant of interim injunction.

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 plaintiff is based on the foundational facts which are supported by material on record at present and also that the plaintiff has a good case to go for trial. Therefore, at this juncture, the prime consideration is not to decide the case on merits but to arrive at *prima-facie* opinion whether the plaintiff has in his favour all the issues viz. "prima facie", "balance of convenience" and "irreparable loss". Considering over all facts and circumstances of the case, I may take note of the fact that the suit has been filed in the year 2023 for the specific performance of the contract dated 05/06/1994. Thus, on this count alone, it appears that the plaintiff has slept over a period of years together for his rights, therefore also the law would not come to rescue the plaintiff. Therefore I am of the firm view that the plaintiff has failed to establish a prima facie case in his favour. It is settled law

that when the plaintiff is not able to establish his prima facie case, the court need not to dwell into other issues.

12. Considering the aforesaid discussion and reasons, I answer all the issues in **NEGATIVE** and resultantly I am not inclined to exercise discretionary power in favour of plaintiff by way of any interim relief. Hence, following order in the interest of justice;

-- ORDER --

A) The present application at Exh-5 preferred by the plaintiff is hereby **rejected**.

B) Cost shall follow the event of the cause.

Order signed and pronounced today on 12TH June, 2026 in an open court.

Date : 12-06-2026
SANJELI

DR.T.R.GHONIYA
PRINCIPAL CIVIL JUDGE
SANJELI- GJ01561.

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