

GJGN010035602025



RECEIVED ON : 17.09.2025
REGISTERED ON : 17.09.2025
DECIDED ON : 29.08.2026
DURATION : 00 - 11 - 12
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**IN THE COURT OF PRINCIPAL DISTRICT
JUDGE, AT : GANDHINAGAR**

MISC. CIVIL APPEAL NO.22 OF 2025

EXH. No.: 23

APPELLANT:
(ORIGINAL PLAINTIFF)

SURESHBHAI RATILAL PATEL
AGED ABOUT : 59 YRS.,
OCCUPATION : FARMING,
RESIDING AT :
2, GURUKUL SOCIETY,
NR. SHANTINAGAR SOCIETY,
CHANSAMA, DIST. : MAHESANA.

VERSUS

RESPONDENT(S):
(ORIGINAL DEFENDANTS)

1. MAHENDRABHAI BALDEVBHAI PATEL

AGED ABOUT : 63 YRS.,
OCCUPATION : FARMING,
RESIDING AT :
23, AARYVAT BUNGALOWS,
NR. PRAHALAD NAGAR,
VEJALPUR, AHMEDABAD.

2. MILANBHAI VISHNUBHAI PATEL
AGED ABOUT : 41 YRS.,
OCCUPATION : FARMING,
RESIDING AT :
MANDIR VALO VAS,
AT VADALI, POST : HAJIPUAR,
TALUKA : KADI, DIST. : MAHESANA.
3. BHUPENDRASINH JIVANJI WAGHELA
AGED ABOUT : 42 YRS.,
OCCUPATION : FARMING,
353, HAMIRJI NO VAS,
DARBAR MANDVI CHOCK,
KOLVADA, DIST. : GANDHINAGAR.
4. KETENKUMAR JAGDISHCHANDRA DAVE
AGED ABOUT : 52 YRS.,
OCCUPATION : BUSINESS,
RESIDING AT :
AJAVAT VAS, MANDVI CHAKLA,
RANDHEJA, DIST. : GANDHINAGAR.

APPEARANCE:

- MR.CHIRAG BHATT : LD. ADVOCATE FOR APPELLANT.
- NONE : LD. ADVOCATE FOR RESPONDENT
NO. 1
- MR. K.B.PATEL : LD. ADVOCATE FOR RESPONDENT
NO. 2 TO 4.

JUDGEMENT

- 1) The appellant (original plaintiff) has filed the present appeal under the provision of Civil Procedure Code and

thereby, challenged the order dated 22.08.2025 passed below Ex.80 in Special Civil Suit No. 13 of 2022 by learned 4th Additional Civil Judge, Gandhinagar, whereby learned trial court has rejected the application of the plaintiff, whereby prayer for *status quo* and interim injunction restraining the defendants from transferring, alienating, selling, mortgaging, associating, creating any type of legal rights in the suit land bearing re-survey no. 1934 (old survey no. 1483/2), admeasuring 3523 sq. mtrs. and re-survey no. 1936 (old survey no. 1483/1), admeasuring 3828 sq. mtrs., situated at Randehje Village, Dist. : Gandhinagar was sought by the plaintiff, in respect of the suit property.

- 2) By filing this appeal, appellant has challenged the impugned order, passed by the learned trial court. Present appellant is original plaintiff and the respondents are original defendants. For sake of brevity and convenience, the parties will be referred to, as per their original status i.e. plaintiff and defendants.
- 3) The brief facts of the appeal are that the plaintiff had preferred a Special Civil Suit No. 13 of 2022 before the trial court for specific performance against the defendants, inter alia seeking cancellation of the sale deed nos. 34292/2021 and 34295/2021 along with other

consequential reliefs in respect of the suit land bearing Re-survey No.1934 (Old Survey No.1483/2), admeasuring 3,523 sq. mtrs., and Re-survey No.1936 (Old Survey No.1483/1), admeasuring 3,828 sq. mtrs., situated at Village Randheja, District Gandhinagar. The plaintiff's application for injunction below Exh.5 was rejected by the learned Trial Court, against which no Appeal from Order was preferred. The suit thereafter proceeded to the stage of evidence, and the examination-in-chief of PW-1 was filed below Exh.42 on 04.01.2024, while the cross-examination was yet to be conducted.

- 3.1) The plaintiff submitted that R/Special Criminal Application No.1867 of 2022 was filed seeking quashing of the land-grabbing FIR, and the Hon'ble High Court of Gujarat, by order dated 09.05.2024, dismissed the applications challenging the validity of the Land Grabbing Act. It was further submitted that, pursuant to the land-grabbing FIR lodged by defendant Nos.2 and 3, Land Grabbing Complaint No.GLGP/97/2024 was filed against the plaintiff and others before the learned Sessions Court, Gandhinagar, which is pending at the initial stage without framing of charges, and the plaintiff and others are on regular bail; whereas SCR.A. No.6203 of 2024 filed by the plaintiff

and others seeking quashing of the FIR is pending before the Hon'ble High Court of Gujarat.

- 3.2) During the pendency of the suit, the plaintiff published a public notice dated 23.03.2025 informing the public about the pending litigation concerning the suit land. Thereafter, defendant Nos.2 and 3 allegedly agreed to sell the suit land to a third party, pursuant to which a public notice dated 13.06.2025 was published in *Gujarat Samachar* dated 14.06.2025 inviting objections for issuance of a Title Clear Certificate in favour of the third party. The plaintiff submitted his written objections to the aforesaid public notice on 16.06.2025, and thereafter filed the present application seeking an order of *status quo* and restraint against the defendants from transferring, alienating, selling, mortgaging, or creating any third-party rights in the suit property. The plaintiff contended that such alienation during the pendency of the suit would prejudice its rights and would attract the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882.
- 3.3) It is stated that the order of learned trial court is against the established principles of law and against the natural justice. The appellant has challenged the impugned order mainly on the ground that the learned Trial Court has passed the same without properly appreciating the factual and legal aspects of the injunction application

and has thereby committed errors of fact and law. It is contended that the Trial Court failed to consider the subsequent development during the pendency of the suit, namely, the attempt of defendant Nos.2 and 3 to sell or transfer the suit property to a third party despite having knowledge of the pending suit. The appellant has stated that, such conduct affects the plaintiff's rights and attracts the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882. It is further contended that the Trial Court failed to properly apply the provisions of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure and Section 37(1) of the Specific Relief Act, 1963, including the three essential ingredients for grant of temporary injunction.

- 3.4) The appellant has stated that, the learned Trial Judge has committed an error of fact and law in observing in paragraph No.12 of the impugned order that the amount of Rs.8,50,000/- paid by the plaintiff to the defendants, comprising Rs.7,00,000/- in cash and Rs.1,50,000/- through bank transfer, could be refunded by the defendants with interest in future in the event of the plaintiff failing in the suit. Such observation is erroneous and beyond the relief prayed for by the plaintiff in the plaint, as the nature of the suit is for specific performance under the provisions of the Specific Relief Act, 1963 and not for recovery or refund of the earnest money from the defendants. It is

also contended that the Trial Court wrongly relied upon and distinguished the judgment cited by the defendants in Appeal from Order No.26 of 2022, as the factual circumstances therein were materially different from the present case. The appellant has further submitted that the Trial Court failed to properly consider the documents produced along with the application below Exh.80 and the judgments relied upon by the plaintiff, including the decisions cited in the memorandum of appeal.

3.5) On the aforesaid grounds, the appellant has prayed for admission of the Appeal from Order, setting aside and quashing of the order dated 22.08.2025 passed below Exh.80 in Special Civil Suit No.13 of 2022 by the learned 4th Additional Senior Civil Judge, Gandhinagar, and remand of the injunction application below Exh.80 for fresh consideration and decision in accordance with law. Learned trial court has not considered the documents produced by the plaintiff along with the injunction application below Exh. 80, which is illegal, arbitrary and capricious and hence, the appellant prayed to allow the present appeal.

4) On presentation of the appeal, notice was issued to the other side through Speed Post and after service of the notice, the respondent nos. 2, 3 and 4 have remained present through their learned advocate and they have

addressed any arguments. On service of summons, the defendant no.1 was duly served with the summons through Speed Post on 07.03.2026. Thereafter, vide order passed below Exh. 21, in view of the submission made by Ld. Advocate for the appellant, right to address arguments on behalf of respondent no. 1 is hereby closed and matter is hereby ordered to be proceeded *ex-parte* against respondent no. 1.

5) Heard learned advocate for the parties and also gone through the material available on record. Considering above mentioned facts and circumstances, following issues have been framed for final disposal of present appeal:

1. Whether the trial court has committed any error, while passing the impugned order?
2. Whether the order of the trial court requires any interference?
3. What order?

6) The findings of this court, for the above points are as under:

Issue No. 1 : In affirmative,

Issue No. 2 : In affirmative,

Issue No. 3 : As per final order.

REASONS

- 7) Learned advocate for the appellant has filed written arguments at Exh. 22 and submitted that defendant No.1 executed a *Bana Chitthi* with the plaintiff on 25.01.2021 in respect of the suit agricultural lands; thereafter, defendant No.1 published a public notice on 09.09.2021 for obtaining title clearance and subsequently sold the lands to defendant Nos.2 and 3 on 18.10.2021. The plaintiff filed Special Civil Suit No.13 of 2022 on 17.01.2022. During pendency of the suit, the plaintiff published a public notice dated 23.03.2025 informing the public about the pending litigation. Thereafter, defendant No.4, through his advocate, published a public notice dated 14.06.2025 for issuance of title clear certificate, pursuant to which the plaintiff lodged written objections on 16.06.2025. Subsequently, the defendant no. 2 & 3 sold the land to defendant no. 4. The plaintiff had, therefore, filed Exhibit-80 on 21.06.2025 seeking *status quo* in view of this subsequent development, but the learned Trial Court rejected the same by order dated 22.08.2025. The subsequent sale during pendency of the suit attracts the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882, and defendant No.4 cannot claim protection merely by describing himself as a bona fide purchaser, particularly when the plaintiff's public notice dated 23.03.2025, defendant No.4's own title-

clearance notice dated 14.06.2025 and the plaintiff's written objections dated 16.06.2025 demonstrate circumstances indicating knowledge of the pending litigation. The learned Trial Court has committed errors of fact and law in rejecting Exhibit-80 by relying upon observations made while deciding Exhibit-5, although the subsequent attempt and eventual sale in favour of defendant No.4 constituted a fresh and material development during pendency of the suit.

- 7.1) The question of prima facie case, balance of convenience and irreparable injury was therefore required to be reconsidered in the light of the subsequent events. The learned Trial Court further failed to properly consider Order XXXIX Rules 1 and 2 CPC, Section 37(1) of the Specific Relief Act, 1963 and Section 52 of the Transfer of Property Act, 1882. The observation in paragraph 12 of the impugned order that the amount of Rs.8,50,000/- paid by the plaintiff could be repaid with interest if the plaintiff ultimately failed in the suit is beyond the reliefs actually prayed for in the plaint and cannot constitute a ground for refusing interim protection. Further, the judgment relied upon by the defendants in Appeal from Order No.26 of 2022 (*Mehul Shantilal Patel v. Samantbhai Nanubhai Varu*) is distinguishable on facts, particularly when, in the present case, payment of Rs.8,50,000/- by the plaintiff is admitted by defendant Nos.2 and 3 in their reply

dated 01.07.2025. The learned Trial Court also failed to consider the documents produced with Exhibit-80 and the subsequent sale effected during pendency of the suit. In these circumstances, the impugned order suffers from material errors of fact and law and warrants interference by the appellate Court. Therefore, the appellant has prayed that the reliefs sought in paragraph 9 of the appeal be granted in favour of the plaintiff and against the defendants.

- 8) Ordinarily, the Court would not interfere with the exercise of discretion in the matter of grant or refusal of temporary injunction by the trial Court and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the order of the Court under scrutiny ignores the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in judicial manner, the fact that the appellate court would

have taken a different view may not justify interference with trial Court's exercise of discretion.

- 9) Before commenting upon the order passed by the learned Trial Court, let me first examine the requirements of the provisions of the Order 39, Rules 1 & 2. The first requirement that has to be fulfilled is the existence of *prima facie* case for granting interim relief or temporary injunction under Order 39 Rules 1&2 of the Court. The applicant has to make out a *prima facie* case in support of the right claimed by him. The existence of *prima facie* case is thus *sine qua non* or conditions prescribed for the exercise of power to grant injunction in favour of the applicant by the Court. Hon'ble Supreme Court and the High Courts have on many occasions explained the meaning of the term *prima facie* case.
- 10) The meaning of *prima facie* case has been highlighted in Halsbury's laws of England in the 4th addition as “*serious question to be tried. It has been stated in the past that where the plaintiff is asserting the rights he were show a strong prima facie case, at least in support of the right which is he asserts. Now, however, the test appears to be whether there is a serious question to be tried*”.

- 11) In *Dalpat Kumar Vs. Prehlad Singh* AIR 1993 SC 276
“It was held that *prima facie* case only means a substantial question raised bona fide which at first site needs investigation and decision on merits”.
- 12) In *American Cyanamid Company Vs. Ithicon Ltd.* 1975 AC 396 it was held “ the *prima facie* case should not be confused with the case proved to the hilt. It is not part of the Court's function at that stage to try to resolve a conflict of evidence or to decide the complicated questions of fact of law which call for detail arguments and considerations. These are matters to be dealt with at the trial”.
- 13) In *Hindusthan Petroleum Corporation Ltd. Vs. Sriman Narayan* reported in AIR 2002 SC 2598 and *Arun Kapoor Vs. Atul Kapoor* reported in AIR 2007 NOC 2127 (Mad.) It was alleged that “no mini trial should be held at the stage of consideration of application of temporary injunction”.
- 14) At the stage of deciding the application under Order 39 the Court has power, where there is a dispute raised or their arises a question which has to be decided by the Court after the evidence being led by both the parties. If there is a case which requires determination after the evidence, there is a *prima facie* case for grant of interim injunction. The Court while deciding the application under Order 39 Rules 1&2 has not to sit and decide the

case on merits but it has to see that a substantial question has arisen from the pleadings of the parties which requires determination of the application under Order 39, pending determination of the suit. The suit property must be saved from being destroyed or being transferred, so that it may not be out of reach of the party who wins the case and thus becomes unable to enjoy the fruits of the decree which may be passed in his favour at a later stage.

- 15) Before dealing with the above matter, at this juncture, the ratio laid down by the Hon'ble Gujarat High Court in case of *Harshadkumar Kantilal Bhalodwala and Anr V/s Ishwarbhai Chandubhai Patel and Ors*, reported in 2010(1) G.L.H 151, is required to be considered at this stage, wherein it is held that:-

"Para-9. Now, so far as the decisions relied upon by the learned Advocate for the respondent No. 1 herein original plaintiffs Ramdev Food Products (P) Ltd. (supra) and Wander Ltd. (supra) are concerned, even in the said decision also the Hon'ble Supreme Court has specifically observed that the Appellate Court can interfere with the order of the trial Court when it is found that discretion has been exercised by the trial Court arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunction. As observed herein above, in the present case while granting the injunction the learned Judge has ignored the settled principles of law regulating grant or refusal of interlocutory injunction i. e. prima facie case, balance of convenience and irreparable loss in

terms of money. There is no prima face case in favour of the original plaintiff. As stated above defendants No. 3 and 4 are the bona fide purchaser of the land in question after payment of full sale consideration and after public advertisement/ notice and when no objections were received and, therefore, the balance of convenience is in favour of the defendants No. 3 and 4.

- 16) In my opinion, if there is a *prima facie* case in existence, which requires that the evidence be led by both the parties to prove their respective contentions. The second requirement under Order 39 Rules 1 & 2 is whether the plaintiff will suffer irreparable injury, if his prayer for temporary injunction is disallowed. The Trial Court comes to the conclusion that the plaintiff is entitled to relief claim by him. On the other hand the defendant shall not suffer any irreparable injury, in case the application of the plaintiffs is allowed. The third requirement of the application under Order 39 is the presence of balance of convenience in favour of the plaintiff.
- 17) Now, considering above mentioned facts and circumstances and considering order dated 22.08.2025 passed by learned trial court, it appears that, while deciding the application learned trial court has observed that the plaintiff has filed original suit for specific performance against the defendants, inter alia seeking cancellation of the sale deed nos. 34292/2021 and

34295/2021 along with other consequential reliefs in respect of the suit land bearing Re-survey No.1934 (Old Survey No.1483/2), admeasuring 3,523 sq. mtrs., and Re-survey No.1936 (Old Survey No.1483/1), admeasuring 3,828 sq. mtrs., situated at Village Randheja, District Gandhinagar. It is undisputed that respondent No.1 had purchased the suit land through a registered sale deed and thereafter sold the same to respondents No.2 and 3 for full consideration by executing a registered sale deed, and the relevant revenue entries are also on record. Though the plaintiff alleges that the deed dated 25.01.2021 is forged, respondent No.1 has disputed his signature therein; at this interlocutory stage, the genuineness of such signature cannot be conclusively determined and is a matter for trial.

- 18) The Ld. Trial Court has held that there is no prima-facie case, balance of convenience and irreparable injury in favour of the plaintiff and, therefore, rejected the application filed by the plaintiff. However, this Court is of the opinion that the learned Trial Court, while deciding the application below Exh.80, has not properly considered the subsequent developments and documents produced by the plaintiff, particularly the alleged subsequent transaction in favour of respondent No.4 during pendency of the suit. At the time, when

impugned order was passed by the Ld. Trial Court, the alleged agreement in favour of the respondent no. 4 was not executed. Thereafter, the respondent no. 2 and 3 have sold the land in favour of the respondent no. 4, this transaction only is sufficient to come to the conclusion that the plaintiff has prima-facie case. Hence, if no status quo is granted at this stage, there is a possibility that respondent no. 4 may further sell the suit land to some other party., which would give rise to multiplicity of litigation. The multiplicity of litigation cannot be the object of any order being passed by that Court. The balance of convenience also lies in favour of the plaintiff, as any further alienation of the suit land may render the suit infructuous and cause irreparable loss and injury to the plaintiff.

- 19) As the respondents are attempting to alienate the suit land to a third party during pendency of the suit, they are liable to be restrained to prevent prejudice to the Appellant and multiplicity of proceedings. The three ingredients under Order XXXIX Rules 1 and 2 of the CPC are thus satisfied. The effect of such transaction, the applicability of Section 52 of the Transfer of Property Act, 1882, and the three essential ingredients of temporary injunction, namely prima facie case, balance of convenience and irreparable injury, therefore require consideration. The plaintiff has alleged that the

respondents are attempting to alienate the suit land during pendency of the suit, thereby causing injury, which may not be adequately compensated in monetary terms and may result in multiplicity of proceedings. Therefore, without expressing any opinion on the merits of the rival claims, this Court finds it just and proper to set aside the impugned order below Exh.80

- 20) In view of above discussion, the order passed by the Ld. Trial Court is required to interference. Accordingly, the issue No.1 and 2 are decided in affirmative and therefore, following order is passed:

ORDER

- (a) The present Appeal from Order is hereby allowed.
- (b) The impugned order dated 22.08.2025 passed below Exh.80 by the learned 4th Additional Senior Civil Judge, Gandhinagar, in Special Civil Suit No.13 of 2022, is hereby quashed and set aside.
- (c) The respondents are hereby restrained from transferring, alienating, selling, mortgaging, associating, creating any type of legal rights in the suit land bearing re-survey no. 1934 (old survey no. 1483/2), admeasuring 3523 sq. mtrs., and re-survey no. 1936 (old survey no. 1483/1),

admeasuring 3828 sq. mtrs, situated at Randheja village, Dist. : Gandhinagar in favour of any third party till the final disposal of the Special Civil Suit No. 13 of 2022.

- (d) No order as to costs.
- (e) Necessary yadi be sent to the trial court, along with a copy of this order, immediately.

Signed and Pronounced in open Court on **29th** day of **August, 2026.**

Date : 29.08.2026
Place: Gandhinagar

J. V. Soni

[ASHISH J.S. MALHOTRA]
GJ01504
PRINCIPAL DISTRICT JUDGE
GANDHINAGAR

