



**IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE,
AT: KALOL, DIST: GANDHINAGAR.**

Special Civil Suit No.21 of 2025

Mr.C.T.Ravat Ld. Advocate for the plaintiffs

Ex-partee against the defendants.

Order below Exhibit 5

1. Introduction: -

The present suit is filed by the plaintiff seeking relief of declaration and permanent injunction in respect of the suit lands New block survey No.471 (old block survey No.679), land admeasuring 0-24-97 sq. Mtrs., Akar value of Rs.1.52 paisa, Khata No.267 situated at Mouje Borisana, Taluka Kalol, District Gandhinagar (hereinafter it is referred to as “*suit land*”).

Pending the suit, the plaintiff has preferred the present application at Exhibit-5 seeking temporary injunction restraining the defendants from transferring, alienating or creating third-party rights in respect of the suit lands.

The defendants were served with the notices but the defendants have not appeared before the Court and they have not filed any reply against the interim injunction application at Exh.5. The plaintiff has submitted his written arguments at Exh.16. It appears from the record that this Court has ordered to proceed ex-parte against the defendants.

It is pertinent to state here that till the pronouncement of this order the defendants has not filed an application to open his right.

2. Averments of the plaintiff side in brief: -

(2.1) It is the case of the plaintiff that the defendant Nos.1 to 3 and 5 to 21 are joint owners and occupier of the said land. Out of total land, defendant No.1 to 3 jointly hold a share admeasuring 0-06-00 (6 Gunthas). The name of defendant No. 4 has been entered in the revenue record as owner and possessor of the suit land. The share of defendant No.1 to 3 was decided to be sold the suit land for Rs.61,00,000/- and the plaintiff paid of Rs.11,00,000/- as earnest money to the defendant No.1 to 3 through cheque and executed agreement to sell on Rs.300/- e-stamp paper which was notarized in the registered Notary registration No.81/2024 dated 27.04.2024. The terms and conditions of agreement to sell are mentioned in page-6 of the application. At the time of executing of sale deed, the defendant No.1 to 3 said to the plaintiffs that they should take possession of the agreed 6 Gunthas of the land and that upon completion of the

transaction, they would also get and execute the necessary documents from the remaining co-sharers.

(2.2) It is averred that defendant No. 1 to 3 along with defendant No.5 to 21 deliberately concealed true facts from the plaintiff and acted fraudulently. In breach of terms and condition of sale deed, the defendant No.1 to 3 executed a registered sale deed dated 16.10.2024 in favour of defendant No.4 before Sub-Registrar No.16332/2024, thereby transferring the suit land. Pursuant to sale deed, mutation entry No.10249 was mutated in the revenue record. Due to unaware of law, the plaintiff did not raise any objection to the said mutation entry. The mutation entry was certified by the Prant Officer, Kalol on 20.01.2025. Thereafter, the learned advocate for the plaintiff issued a legal notice dated 06.02.2025 by registered A.D.Post calling upon the defendant No.1 to 3 to specifically perform the terms of the sale deed and to cancel the registered sale deed bearing registration No.16332/2024. The said notice was duly served upon the defendant Nos.1 to 3 on 07.02.2025. Despite of service, the defendant nos.1 to 3 have not filed any reply against the notice.

(2.3) It is further averred that the cause of action has arisen for filing the present suit seeking a declaration that the sale deed executed in favour of defendant No.4 in collusion of with defendant No.5 to 21, is illegal, null and void and not binding upon for the plaintiff, for protection of the plaintiff's

prior right to purchase the suit land and for direction to defendant No.1 to 3 to execute a registered sale deed in favour of the plaintiff in accordance with terms and condition of the sale deed. Further, the sale deed was executed by the defendant No.1 to 3 in favour of plaintiff. As the names of defendant Nos.5 to 21 were also reflected in revenue record of the suit land prior to the registration of the sale deed bearing registration No.16332/2024, the defendant No.5 to 21 have been joined as parties to the suit to avoid any objection on the ground of non-joinder of necessary parties. The plaintiff do not claim any relief against defendant No.5 to 21.

(2.4) On the basis of above the plaintiff has stated that he has prima facie case and balance of convenience is in his favours and apprehended that if the suit lands are vested in hands of third parties, he would like to suffer irreparable loss.

3. Absence of Defendants:-

(3.1) The record reveals that the defendants were duly served with summons and notice of the interim injunction application. Despite service, **the defendants have chosen not to appear before the Court and have not filed any reply to Exhibit-5.**

(3.2) It further appears from the proceedings that the matter is ordered to proceed **ex-parte** against the defendants and till

the pronouncement of this order, no application is filed by the defendants to open their right or contest the interim relief.

4. Legal Provisions:-

The present application is governed by:

- **Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908**, relating to grant of temporary injunction; and
- **Section 41 of the Specific Relief Act, 1963**, which prescribes circumstances in which injunction cannot be granted.

5. Settled Principles Governing Temporary Injunction: -

It is well settled that while deciding an application for temporary injunction, the Court is required to consider a **prima facie case**; the **balance of convenience** lies in favour of the plaintiff; and the injunction is refused whether the plaintiff would suffer **irreparable loss or injury**. An injunction being an equitable relief, the conduct of the party seeking such relief is also a relevant consideration.

6. Arguments of the Plaintiff side: -

(6.1) The learned advocate for the plaintiff has filed written arguments at Exhibit-16 reiterating the averments of the plaint and application.

(6.2) It is contended that the agreement to sell does not fix a specific date for execution of the sale deed and therefore, as per **Article 54 of the Limitation Act**, limitation commences

from the date of refusal, which according to the plaintiff is evident only upon issuance of legal notice dated 06.02.2025.

(6.3) It is further submitted that if the suit lands are alienated during pendency of the suit, it would result in multiplicity of proceedings and conflict of interest.

7. Points for Determination:-

The following points arise for consideration:-

- a. Whether the plaintiff has established a prima facie case?
- b. Whether the balance of convenience lies in favour of the plaintiff?
- c. Whether irreparable loss would be caused to the plaintiff if injunction is refused?
- d. What order?

8. Answers to the issues: -

- (a) In affirmative.
- (b) In affirmative.
- (c) In affirmative.
- (d) As per final order.

9. Findings and Reasons: -

Having heard the plaintiff side, considered the pleading, written arguments, and the documentary evidence on record, and examined the applicable legal provisions under Order 39 Rules 1 & 2 of the Code of Civil Procedure and Section 41 of the Specific

Relief Act, the following are the reasons for the decision of the case: -

(a) **With regard to the Prima Facie Case: -**

The plaintiff has established a strong prima facie case as defendant No.1 to 3 executed a agreement to sale deed in his favour accepted the entire sale consideration of Rs.11,00,000/- and assured the plaintiff that registered sale deed would be executed after obtaining the consent of the remaining co-shares. Despite the said agreement, the defendant No.1 to 3 along with defendant No.5 to 21 executed the registered sale deed in favour of defendant No.4, giving rise to a bonafide and triable dispute requiring adjudication by this Hon'ble Court. In absence of any rebuttal from the defendants, the documents placed on record disclose a **serious triable issue** requiring adjudication, thereby establishing a prima facie case. It is the view of this Court that the plaintiff has successfully established a prima facie case and hence the issue no. 1 is answered "In affirmative".

(b) **With regard to the Balance of Convenience: -**

If the suit land is permitted to be alienated or encumbered during pendency of the suit, the very subject matter of the suit would be altered, leading to further litigation involving third parties. On the other hand, maintaining the status quo would not cause irreparable

prejudice to the defendants, as it merely preserves the property till final adjudication.

It appears that the **balance of convenience tilts in favour of maintaining status quo** till final adjudication, for the welfare of both the sides and hence the issue no. 2 is answered “In affirmative”.

(c) **With regard to the Irreparable Loss: -**

In the event of transfer or creation of third-party rights, the plaintiff would be compelled to initiate multiple proceedings, rendering the relief of specific performance illusory. Such loss cannot be adequately compensated in terms of money. Therefore, irreparable injury is likely to be caused if interim protection is denied and hence the issue no. 3 is answered “In affirmative”.

(d) **With regard to Need to Prevent Multiplicity of Proceedings: -**

Grant of status quo would prevent multiplicity of proceedings and avoid conflict of interest, which is one of the recognised grounds for exercise of equitable jurisdiction under Order 39 CPC.

10. Considering the uncontroverted pleadings, documentary material on record, conduct of the defendants in remaining absent despite service, and applying the settled principles governing

temporary injunction, this Court is of the considered opinion that the plaintiff has made out a case for interim protection. Therefore, while considering the arguments, the following order is passed:-

ORDER

- (A) The application at Exhibit-5 is **allowed**.
- (B) The defendant No.4 their agents and persons claiming through them are hereby **restrained from selling, transferring, alienating, encumbering or creating any third-party rights** in respect of the suit lands only admeasuring 0-06-00 sq. Mtrs., until final disposal of the suit.
- (C) No order as to costs at this stage.

Signed and pronounced in the open court today on this 24th day of July, 2026.

Date : 24.07.2026
Place : Kalol

(ALI ASGAR HASANALI HIRANI)
Additional Senior Civil Judge,
Kalol, Dist.Gandhinagar
Code No.GJ01184