

REGULAR CIVIL SUIT NO. 146 OF 2022

ORDER BELOW EXH. 5

1). The present application is preferred by the plaintiff for ad-interim injunction against the defendants under Order 39 Rule 1 and 2 and as per Section 151 of the Civil Procedure Code.

2). The brief facts of the present application preferred by the plaintiff are that land bearing New Block/Survey No.69, (Old block No.52 paika 2) admeasuring 5852.84 Sq. Mtrs. (7000 sq. fit), Value of Rs.65.55 paika, Situated at Mouje : Khatraj, Tal. Kalol, Dist. Gandhinagar (hereinafter it is referred to as “suit land” for the sake of convenience and brevity).

A description of suit land :-

East	: Khatraj Road
West	: Gauchar land
North	: New Block No.70 (old block No.53)
South	: New Block No.94 (old block No.59)

The plaintiff was a minor in the year 1989, during the said period, the the plaintiff’s father acting as the lawful guardian, executed and registered sale deed No.1632/1989 in the name of plaintiff. The plaintiff become the lawful owner of the suit land.

It is averred that the land mentioned in para-1 belonged to Patel Dahiabhai Kashibhai in the year 1989. The plaintiff was minor at that time, his father, acting as the lawful guardian purchased the said land in the name of the plaintiff by paying Rs.35,000/- to the owner on 21.11.1989, vide registered sale deed No.1632/1989. Since the

execution of the said sale deed, the plaintiff has become the lawful owner of the land. The mutation Entry No. 860 entered in the revenue record pursuant to the registered sale deed, and the name of the plaintiff is recorded as minor Amitkumar Tolaram.

It is further averred that the facts stated in paragraph 3 above, the plaintiff was a minor at that time and residing in Ahmedabad. However, defendant No. 1, conspired and acted illegally impersonated the minor, his guardian, and the general power of attorney holder, Shri Ashokkumar Tolaram Bothra, as the seller. Without obtaining prior permission of the Hon'ble Court for sale of the minor's property, defendant No. 1 executed Sale Deed No. 1804/1992 in his own favor. The said sale deed is void ab initio, illegal, and does not confer any right, title, or interest upon defendant No. 1 in respect of the suit land. The plaintiff does not accept or acknowledge the said sale and declares that defendant No. 1 has no lawful ownership or rights arising from it.

It is further averred that the facts stated in paragraph 4 above, defendant No. 1 executed Sale Deed No. 2001/1992 in favour of Defendant No. 2. Thereafter, Defendant No. 2 executed Sale Deed No. 1249/2010 in favour of Defendant No. 3, and Defendant No. 3 executed Sale Deed No. 3663/2011 in favour of Defendant No. 4. All these sale deeds are void ab initio, illegal, and executed without lawful right, title, or interest.

It is further averred that at the time of the sale of the suit land, the plaintiff was a minor and was unaware of the said transactions. The plaintiff had no knowledge of the documents or the dealings

mentioned in paragraphs 3, 4, and 5 above. On 14.01.2022, while going to the village during a festival, the plaintiff came to know from the elders that the land had been sold years ago when he was a minor. On making further inquiry and revenue records, the plaintiff discovered the transactions mentioned earlier. The defendants applied for certified copies of the relevant sale documents, which were obtained on 15.02.2022 and 06.05.2022. The plaintiff filed a suit before the Hon'ble Court seeking a declaration and permanent injunction. As the plaintiff has a strong prima facie case, it has become necessary to file the present application for interim injunction pending the final hearing of the suit.

Plaintiff has prayed to restrain defendants, their men, servants, agents etc. from interfering with the possession of plaintiff over suit land by way of granting ad-interim injunction.

Plaintiff has further prayed to restrain defendants, their men, agents, servants etc. from selling, gifting, mortgaging suit land by way of granting ad-interim injunction.

3). On presentation of suit as well as present application, summons - notice were issued to defendants and they have never present before the Court and they have not filed any reply of the plaint. The Court has passed the exparte order against the defendants.

4). Plaintiff has filed the written argument at Exh.51.

5). Considering the pleadings, documentary evidence and submission advanced by the learned Advocate for both the sides, for deciding the present application the following points raised to decide

the present application as follows :

- (1) Whether the plaintiff proves that he is having a prima facie case ?
- (2) Whether the plaintiff proves balance of convenience in his favour ?
- (3) Whether the plaintiff proves that if injunction as prayed is not granted then he will suffer an irreparable loss which cannot be compensated in the terms of money ?
- (4) What order ?

6). My finding regarding the above issues are as follows :

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

:- Reasons :-

Point No. 1 to 3 :

8). I have perused the record and submissions of the learned advocate for both the sides and documentary evidence produced herein. The plaintiffs have prayed interim injunction under Order 39 Rule 1 & 2 of CPC, which is purely a discretionary power of the Court. This power has to be exercised by the Court fairly and equitably. Plaintiff must establish three ingredients, viz. prima-facie case, irreparable loss and the balance of convenience in his favour. In absence of any of three ingredients, the plaintiff cannot be held

entitled for the interim injunction. It is well settled position of law that at the time of interim application, the Court should not evaluate all the evidence strictly as per the Law of Evidence. The aim of the interim application is to protect the suit property from probable obstruction or disturbance and to maintain it till the legal rights are ascertained. Considering all these settled principles of Law, this application is to be considered.

9). Now, in the present suit, plaintiff has prayed for Cancellation of Sale Deed dated, 04-09-1992 and all subsequent sale deeds thereafter of the suit Property. But present suit was instituted on 04.07.2022 i.e. after almost 30 years. Though, plaintiff's suit might be in limitation but any suit for cancellation of Sale Deed, limitation is important factor and plaintiff has filed present suit after a very long delay.

Looking to the facts and circumstances, I am of the view that plaintiff fails to prove his prima-facie case against the defendants. Hence, I answer point No. 1 in the negative. Therefore, considering the above facts, so far as balance of convenience is concerned, at the time of deciding ad-interim injunction is require to be considered, the balance of convenience of the parties and as discussed, the plaintiff fails to prove prima-facie case. Therefore, if the ad-interim injunction as prayed by the plaintiff be granted in his favour, then certainly, it can be said that the defendants could have to suffer inconvenience. Therefore, I believe that balance of convenience is also not in favour of plaintiff, thus, in sum and substance, I answer the point No. 2 also in the negative. Therefore, considering above facts and circumstances and discussed as held above, I am of the view that the point regarding irreparable loss, which cannot be compensated in terms of money is

also more in the favour of defendants compare to the plaintiff. Hence, I answer point No. 3 also in the negative and for point No. 4, I pass following order as follows :

-:: ORDER ::-

- 1) The ad-interim application vide Exh. 5 of the plaintiff is hereby ordered to be rejected.
- 2) No order as to costs

Pronounced in the open Court on 17nd March, 2026.

Date: 17/03/2026
Place : Kalol-Gandhinagar.
m.i.pipadwala

(V.H.Thacker)
2nd Addi. Civil Judge Kalol,
Gandhinagar (UIC:GJ01696)