

R.C.S No.196/2023**Order below Ex-5**

(1) Read the application, perused the record and heard Ld. Advocate for the plaintiff. Plaintiff has filed the suit against the defendants for the specific performance of contract along with permanent injunction and for ad -terim relief, plaintiff has preferred this application. In his injunction application, he has submitted that the defendant No.1 had executed registered agreement to sell No.8833/2019 Dated 13/08/2019 for the land located at Dhamasana, Taluka: Kalol, District: Gandhinagar bearing Account No.1040, old Block No.940, new Block/Survey No.1325 admeasuring 2-51-62 Hector-Are-Sq. Mtrs., Akar Rs.14.60Ps. Which is undivided share of the defendant No.1. (For the sake of convenience and brevity, aforesaid property hereinafter referred to as "suit property"). The land of defendant No.1 was decided to be sold to the plaintiff at a total price of Rs.10,00,000/- and out of which he had paid Rs.2,20,000/- in cash and Rs.80,000/- through cheque as an earnest money to the defendant No.1. which agreement to sell is currently in force and not revoked. Thereafter, several request have been made by the plaintiff for execution of sale deed but the defendants did not acted as per contract and therefore, plaitniff felt refusal and filed this present suit.

(2) Defendants are duly served with the summons, but they have not appeared before the Court. Learned advocate for the plaintiff has filed an application vide Exh.8 stating that though defendants served not remained present before the Court themselves nor through their advocate, therefore, *exparte* order may be passed against them, which was allowed and accordingly suit is proceeded *exparte* against them.

(3) Ld.Advocate for the plaintiff in her arguments submitted that the registered agreement to sell was executed on 13/08/2019, and plaintiff is ready and willing to pay the remaining consideration amount. As *prima facie* case, balance of convenience is in favour of plaintiff and if this application is not allowed then the irreparable loss will be incurred to the plaintiff. Therefore requested to allow this application.

(4) In view of the above reffered rival contentions and pleadings, following issues have been raised for determination of the present application.

1. Whether the plaintiff proves that threr is a *prima- facie* case in his favour?
2. Whether the plaintiff proves that if a temporary injunction is not granted, he shall suffer irreparable loss which can not be compensated in terms of money?

3. Whether the balance of convenience is in favour of the plaintiff?
4. What Order?

(5) My answers on the above issues are as under:

1. In the affirmative
2. In the affirmative
3. In affirmative
4. As per final Order

(6) Before discussing the factual aspects of the matter, certain legal provisions and settled law with regard to temporary injunction are required to be taken into consideration, that temporary injunction can be granted if the case is covered by the three principles, namely (1) on making out a prima facie case (2) on showing balance of convenience in plaintiff's favour, in that the refusal of the injunction would cause greater inconvenience to him and (3) whether the refusal of the injunction he would suffer irreparable loss. Granting an injunction is a matter of discretion and in its exercise, the court has to satisfy itself whether the plaintiff has a triable case. Before invoking the jurisdiction of the court to seek temporary injunction, the plaintiff is bound to show that he has a legal right and that there was an invasion of his right.

-. Reasns of answers are as under :-

Issue No. 1 to 3 :

(7) As the issues No.1 to 3 are interconnected, therefore for the sake of convenience and brevity, I discuss all the three issues together. As per the facts of this case and on perusing the documents, it is not disputed fact that the defendant No.1 has executed registered agreement for sale of suit property in favour of the plaintiff. It is also admitted fact that the earnest money of Rs.3 Lac was paid by the plaintiff. In this case plaintiff demanded for the specific performance of contract. As the agreement to sell is registered one and it is not disputed fact that the defendant No.1 had not executed the said registered agreement. Therefore, prima facie case and balance of convenience is in favour of the plaintiff. If this application is not allowed and the suit property is transferred or assigned by the defendants in any way to third party then this will cause irreparable loss to the plaintiff and that can not be compensated in terms of money. Considering the above discussion, my answer of point No. 1, 2 & 3 as affirmative. Hence, I pass the following order in the interest of justice.

ORDER

[1] The ad-interim temporary injunction application preferred by the plaintiff is hereby partly granted.

[2] The defendant No.1 himself and his agents, servants, assignees, executors are hereby directed not to transfer, sell,

mortgage, gift or to assign in any way the suit property till the final disposal of this suit.

[3] No order as to cost.

Signed and pronounced in the open court today on 16th day of April, 2024.

Date : 16.04.2024
Kalol.

(Ms.U.B.Devda)
Additional Senior Civil Judge,
Kalol
(Code No.GJ01259)