

ORDER BELOW EXH. 5

IN

REGULAR CIVIL SUIT NO. 219 OF 2023

Advocate :

Mr. M.P. Parmar, Ld. Advocate for the plaintiff

Mr. R.S.Sathwara, Ld. Advocate for the defendant

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 is that non-agricultural land bearing revenue survey No.2526,(re-survey No.197 piaki 2) admeasuring 0-28-40 Akar of Rs.1.20, non-agricultural land bearing revenue survey No. 2549 (re-survey No.204 paiki 2) admeasuring 0-23-26, Akar of Rs.1.03, both revenue account No.2095, situated at Mouje Nardipur, Taluka : Kalol, District : Gandhinagar. (hereinafter it is referred to as “suit land”) The defendant holds clear, marketable and undisputed ownership, possession and rightful owner of the suit land. The defendant agreed to sell the suit land to plaintiff for a total sale consideration of Rs.10,10,000/-.

The defendant agreed to sell the suit property to the plaintiff through registered sale deed executed before the office of Sub-registrar, Kalol, bearing registration No.1022/2022 dated 08.06.2022 in presence of witnesses. As per the terms of the sale

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deed, the plaintiff has paid of Rs.1,00,000/- in cash on 03.04.2022, Rs.1,55,000/- in cash on 10.04.2022, Rs.1,70,000/- in cash on 28.05.2022 and Rs.2,00,000/- in cash on 08.06.2022 . The total cash amount paid to the defendant amount of Rs.6,25,000/- as per of total agreed sale consideration amount of Rs.10,10,000/. The payment was duly confirmed by the defendant at the time of registration. The terms and conditions of registered sale deed is mentioned in para 1 to 17 vide Exh.5.

The plaintiff and defendant had agreed to execute the sale deed as per the terms and condition of said agreement. As per the condition No.2 of the deed, the defendant was required to obtain and provide the title clearance certificate in writing. However, the defendant has failed to take any steps to obtain or submit such certificate, despite the plaintiff repeated reminders. The plaintiff has always been ready and willing to pay the remaining sale consideration and to complete registration of the sale deed, and he ready to do so. Therefore, a legal notice was issued on 28.02.2023 through his learned advocate, calling upon the defendant to execute the sale deed. The said notice was received by the defendant, who assured that the sale deed would be executed shortly, but no action has been taken till date. The plaintiff assurance given by the defendant and therefore he did not initiate any legal action earlier. However, the plaintiff came to know that unknown person are illegally entered to the suit land, the suit land may be in the process of being sold, transferred or assigned to third parties. Despite the defendant's

agreed, after receiving his legal notice, to meet him personally and obtain the necessary title clearance certificate, no action has been taken by him till date. The plaintiff is compelled to file the present suit seeking execution of the sale deed of the suit land in accordance with terms and conditions.

The present application has been filed because the defendant had agreed to sell suit land to him as stated in the original plaint. However, the defendant has failed to perform his obligations under the agreement. The plaintiff urges this Hon'ble Court to take the application on record, issue summons to the defendant, and directed him to appear and present his defense. If the defendant sells, transfers or creates any third party rights over the suit land during the pendency of the suit, the plaintiff shall suffer irreparable loss which cannot be compensated monetarily and will lead to unnecessary multiplicity of legal proceedings. The plaintiff has a strong prima facie case, balance of convenience lies in favour of plaintiff, and the grant of interim relief will cause no prejudice or loss to the defendant. Hence, interim relief is necessary to prevent injustice.

The plaintiff has prayed to grant a permanent injunction restraining the defendants, their agents, servants, employees, associates, representatives and persons claiming through them from selling transferring, mortgaging, or creating third party right, title or interest, charge, lien, encumbrance or in any other mode or manner in respect of said property.

3). The Court had closed the right to file reply of defendant due to constantly absent on behalf of the defendant side. Thereafter, the learned advocate of the defendant has submitted a notice of discharge as lawyer of defendant and the defendant has engaged the new lawyer. Thereafter, the right to file reply of defendant is opened. The plaintiff has produced documentary evidence vide list Exh.12 Mark 12/1 and 12/2. The defendant has not produced any documentary evidence.

4). On presentation of suit as well as present application, summons - notice were served to the defendant and he has appeared through his learned advocate R.S.Sathwara before the Court but the defendant has submitted his reply at Exh.25 against interim injunction and plaint, wherein he denied the averments made in the application Exh.5 and plaint except specifically admitted in it. In his written submission, the defendant stated that the suit property was agreed to sold by the defendant to plaintiff and sale deed in respect of said property was registered before the office of Sub-Registrar, Kalol. The plaintiff assured the defendant that after obtaining his signatures on the sale deed, the sale consideration amount would be paid to him at their residence. Relying upon the said assurance, the defendants signed the documents. However, the plaintiff did not pay any amount towards the sale consideration and obtained the signatures of the defendants by fraud, misrepresentation and false promises. Thereafter, the plaintiff kept avoiding payment on one pretext and failed to pay even a single rupee towards the sale

consideration. The plaintiff has falsely claimed that the defendants had received the entire sale consideration and executed the sale deed voluntarily. The plaintiff has also issued a false and malicious notice with an intention to illegally grab the land of the defendants without making payment of the sale consideration. The defendants repeatedly requested the plaintiff to cancel the sale deed, however, the plaintiff failed to do so and instead started making illegal demands and filed the present false suit with an intention to harass the defendant and unlawfully gain monetary benefits. Therefore, the alleged sale deed is fraudulent, illegal and void as the same was executed without payment of consideration and by way of fraud and misrepresentation. Hence, the suit filed by the plaintiff is false, not maintainable in law, and liable to be dismissed with costs.

5). The plaintiff has submitted his written arguments at Exh.20 reiterating averments made in the application of interim injunction. The plaintiff has filed affidavit in rejoinder at Exh.27. The defendant has submitted his written argument at Exh.28.

6). Considering the pleadings, documentary evidence and submission advanced by the learned advocate for the plaintiff, 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 their favour ?

(3) Whether the plaintiff proves that if injunction as prayed is not granted then they will suffer an irreparable loss which cannot be compensated in the terms of money ?

(4) What order ?

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

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

:- Reasons -:

Point No. 1 to 3 :

8). I have perused the record and submissions of the learned advocate for the plaintiff and documentary evidence produced herein. The plaintiff has 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 their 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 will till the legal rights are ascertained. Considering all these settle principles of Law, this application is to be considered.

9). I have taken into consideration both side argument and documentary evidence submitted before this Court. Upon perusal of the pleadings and material available on record, the plaintiff has produced the registered agreement to sale regarding to the disputed property vide Mark.3/1. The defendant in his argument and written statement admitted that the execution of the said agreement to sale by the defendant in favour of the plaintiff has not been disputed. Though the defendant has raised the question regarding the amount of earnest money, the defendant has said that earnest money of the agreement to sale was not given by the plaintiff. Looking to the record vide Mark at 3/1 in this document, it is mentioned that the plaintiff has paid of Rs.6,25,0000/- to the defendant towards earnest money. Now, whatever question raised by the defendant regarding the earnest money, it cannot be solved out without taking the evidence. At this juncture, documentary evidence produced by the plaintiff vide Mark 3/1 to 3/4 and Mark 31/1 to 31/4 is sufficient to establish a prima facie case in favour of plaintiff. The learned advocate for the plaintiff side has vehemently argued that if the Court will not pass any restrain order against the defendant, the defendant will sale out the disputed property and plaintiff shall suffer to face multiplicity of proceedings and this loss will not

convert into money. On the other hand, no substantial prejudice would be caused to the defendant if the status quo with regard to the defendant is maintained during the pendency of the suit. Having regard to the material available on record, when I have found that the plaintiff has established prima facie case and considering the argument of the plaintiff side balance of convenience is lies in favour of the plaintiff and refusal of interim relief is likely to cause irreparable loss and injury to the plaintiff. Hence, aforesaid reason and document present before this Court, I believe that the Issue No.1 to 3 are in Affirmative. I pass following order regarding Issue No.4 as under.

:: ORDER ::-

- 1) The ad-interim application vide Exh. 5 of the plaintiff is ordered to be allowed and defendant directed to maintain the status quo till the finalization of the suit.
- 2) No order as to costs.

Signed and pronounced in the open court today on this 15th day of June, 2026.

Date : 15.06.2026
Place : Kalol

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

//M.I.pipadwala//

Additional Senior Civil Judge, Kalol