

:: ORDER BELOW EXH. - 5 ::

APPEARANCE ::-

Ld. advocate Mr. M. G. NAQVI - for the plaintiff.

Ld. advocate Mr. H. B. JAMANI - for the defendant.

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[1] The Plaintiff has filed the present application under Order 39, Rule 1 & 2 of the Code of Civil Procedure, 1908 against the defendant to get the interim injunction with the prayers as prayed for in para (3) of the present application.

[2] Later on, on service of the notice upon the defendant, he had appeared through his learned advocate before the Court and had submitted joint reply to the suit as well as the present application vide Exh. 12. Read the reply.

[3] The plaintiff side has submitted documentary evidence vide Exh. 4. On the other side, the defendant had not submitted any documentary evidence. This Court has considered the same at the time of passing order below the application on hand.

[4.1] Further, the learned advocate for the plaintiff side had orally submitted his arguments encircling the facts and circumstances stated in the application and

lastly submitted to grant status quo in the interim injunction application.

[4.2] On the other side, the learned advocate for the defendant had orally submitted encircling the facts and circumstances stated in his reply and lastly consented for status quo in the interim injunction application.

[5] To decide the present application, following issues arise for the determination.

[1] Whether the Plaintiff proves that his case is prima facie ?

{2] Whether the plaintiff proves that the Balance of Convenience is in his favour ?

[3] Whether the Plaintiff proves that he will suffer irreparable Loss unless interim injunction is granted ?

[4] What Order ?

[6] The decisions as to the above issues are such.

[1] In Affirmative

[2] In Affirmative

[3] In Affirmative

[4] As per Final Order.

[7] The reasons for the above decisions are as under .

[7.1] **PRIMA FACIE CASE :-**

This is the most important ingredient to be considered before granting temporary injunction. **It is mandatory for every party who is seeking injunction, to establish his/her prima-facie case** for obtaining injunction.

[7.2.1] Now, it has been contended by the plaintiff side that the land in question bearing S.No. 108/*paiki* 2 (admeasuring H.1-A.69-97 Sq.M.) located at Una, *Tal. Una* is of the ownership of the defendant; the defendant had entered into a registered agreement to sell with him for the land in question bearing Hec. 00-48-56 Sq.M. falling on the Eastern Side of the aforesaid survey number; the defendant had also received Rs. 500000-00 as advance and even if the plaintiff was ready and willing to pay the balance amount, the defendant did not pay any interest to fulfil the condition as laid down in the said agreement to sell; the plaintiff had also sent notice to the defendant in this regard on Dt. 27/06/2022; as even after receiving the said notice, the defendant had not proceeded further in fulfilling the condition laid down in the agreement to sell i.e. to sell the property to the plaintiff as agreed upon by way of a registered agreement to sell, he has file the present suit.

[7.2.2] On the other hand, it has been the stand of the defendant that he had borrowed Rs. 500000-00 from the plaintiff as he is lending money to others; the plaintiff got this agreement to sell registered from him as security for the money lent to him; he had paid full amount of the borrowed money i.e. Rs. 500000-00 back to the plaintiff, but the plaintiff had not got this agreement to sell cancelled.

[7.2.3] Now, in support of his stand, the plaintiff had also produced a copy of registered agreement to sell executed between him as well as the defendant vide Mark 4/1. On bear perusal of the said document, it becomes clear that it was executed between the parties on Dt. 18.01.2021 and the same is duly registered vide Sr. No. 138. Further, on perusal of the page No. 3 & 4, it becomes more clear that the land admeasuring Hec. 00-48-56 Sq. M. falling of the Eastern side of the land in question bearing S. No. 108/*paiki* 2 was agreed to sell by the defendant to the plaintiff on his paying the balance amount within three months of the date of its execution. Thus, on bear perusal of the said agreement to sell, it becomes clear that the parties were to follow the conditions as laid down by them in

connection to the execution of the sale deed of the said proportion of the property in question. Moreover, the plaintiff had also produced a copy of the notice sent to the defendant to fulfil the condition as laid down in the said agreement to sell vide Mark 4/2. The plaintiff had also produced a copy of the Village Form No. 8-A of the said property in question wherein the name of the defendant is shown as owner & possessor.

[7.2.4] On the other side, it has been the stand of the defendant that as he had borrowed Rs. 500000-00 from the plaintiff, he had got this agreement to sell registered. Moreover, he has contended that even though he had paid back the full amount of Rs. 500000-00 to the plaintiff, he had not got this agreement to sell cancelled. Now, in this connection, it is required to be noted at this juncture that, had it be the case, then also, the defendant had not produced any document to show on record that he himself had initiated any proceedings such as giving notice to the plaintiff, etc. to cancel the said agreement to sell.

[7.2.5] Moreover, whether the plaintiff had lent the defendant Rs. 500000-00 and the same had already paid back to him or not, is an issue

which can better be decided after recording of the evidence of both the sides. Thus, Under these circumstances and in view of the above discussion, this court is of the opinion, on the basis of the material available on record, that when prima faice the land in question is in the name of the mother of the grand-father of the defendant; plaintiff had shown on record that a registered agreement to sell was executed between them; that the defendant, even after giving notice, had not executed the sale deed in favour of the plaintiff; no documentary evidence shown by the defendant as to initiation of any proceeding by him to cancel the said agreement to sell, etc., this Court is of the view that the plaintiff has succeeded in establishing his prima facie case. Hence, issue No. 1 is decided accordingly.

[8] BALANCE OF CONVINIENCE AND IRREPAIRABLE LOSS::-

[8.1] These are also equally important aspects to be considered at the time of deciding application of interim injunction. It is necessary for the plaintiff to establish that balance of convenience lies in his/her favour and he/she would suffer irreparable loss if the injunction is not granted.

[8.2] Considering the material available on record, in light of the reasons stated above, if the interim injunction application is not allowed, the plaintiff would suffer more injury as compare to the defendant as the defendant had been paid the initial amount of Rs. 500000-00 and his name is already there in the revenue record. Further, if the interim injunction is not granted, it might lead to multiplicity of the proceedings if the land in question is sold to other person(s) by the defendant. Thus, the plaintiff has succeeded to show that if the interim injunction is not granted, he would face serious injury/loss as compare to the defendant. Moreover, considering the material available on record, specially when the defendant has not been able to show on record by any document through which it can come on record that he had given any notice or initiated any proceedings to cancel the said agreement to sell, it becomes clear that if the injunction is not granted, the plaintiff would be at loss. Thus, when the plaintiff has, prima facie, proved his case in his favour, this Court under such circumstances, is of the opinion that the plaintiff also succeeds to prove the point of balance of convenience and that of irreparable loss in his favour.

Hence, issue No. 2 and 3 are decided accordingly.

[9] Thus, in view of the aforesaid discussion, this court passes following final order.

--: O R D E R :--

[A] The present application filed at Exh. - 5 by the plaintiff under Order XXXIX, Rule 1 & 2 and Sec. 151 of the Code of Civil Procedure 1908, to get interim injunction stands allowed.

[B] The defendant is ordered not to sell, transfer, mortgage, etc. the land admeasuring Hec. 00-48-56 Sq. M. falling on the Eastern side of the land bearing S. No. 108/*paiki* 2 located in Village Una, Tal. Una till final disposal of the suit.

[C] The cost shall follow the final order of the suit.

Pronounced today on 22nd October, 2024 in the open court.

Una.

Dt. : 22.10.2024. [Hardiv Kiritkumar Vachharajani]
Additional Senior Civil Judge
Una. [Dist. Gir Somnath]
[GJ01231]