

**Sp.C.S.No.10 of 2020**

**Order below application Exh-5**

(1.0) Present application is filed by the plaintiff for interim injunction under 0.39 R.1,2 of C.P.Code.

Heard Ld. Advocate Mr.Upaddhyay for the plaintiff and Ld. Advocate Mr.R.A.Parmar for the defendant as well. Also, going through the pleadings of the parties as well the documents produced in their support.

**(2.0) Plaintiff's submission:**

Ld. Advocate Mr.Upaddhyay vehemently argued that present suit is filed for declaration and permanent injunction and cancellation of the sale deed. Suit properties i.e. agriculture land, Block no.373/2, 373/3 situated in village Paladi, Ta. Una. Ld. Advocate Mr. Upaddhyay argued that plaintiff was in financial need, hence went to the defendant, obtained loan of Rs.5,00,000/-. At that time, defendant insisted to execute agreement to sale of the suit land

as security. But on the guise of agreement to sale, defendant got thumb impression of illiterate plaintiff on the sale deed, and now trying to snatch possession of the suit land. It can be apparently seen that Defendant has committed fraud with plaintiff. Plaintiff has received only Rs.5 lakhs, so called consideration mentioned in the sale deed to the tune of 29 lakhs is never given to plaintiff. If it be so, the defendant would definitely have some receipts. Averments of the plaintiff are supported by farmers whose farms are situated nearby the suit land. Photograph and video C.D. also showing that the suit land is actually in the possession of the plaintiff. Defendant converted the suit land into non agriculture thereby trying to sell the suit property; therefore, it is need of the time that the defendant is restrained by injunction order. Plaintiff has filed criminal complaint against defendant for the alleged fraud, which is pending in the Court. The documents produced

by the plaintiff establish prima facie case.

If the defendant is not restrained, irreparable loss may cause to the plaintiff. Balance of convenience is also in favour of the plaintiff. If suit property is sold pending the litigation, it results in multiplicity of proceeding. Hence, prayed to grant the relief of application Exb-5.

Ld. Advocate Mr.Upaddhyay referred D.E.lists produced by both the parties in support of his submission, which is also considered.

**(3.0) Defendant's submission:-**

It is vehemently argued by Ld. Advocate Mr. R.A.Parmar on behalf of the defendant that suit property is purchased by the defendant by giving handsome amount of Rs.29 lakhs to the plaintiff, thereby acquired ownership. Actual possession is with the defendant. Defendant has developed the land, converted in to non agriculture, and planted so many trees on the land. Also, got the electricity connection. Sale deed is registered with sub registrar

office not by misrepresented as alleged. Son of the plaintiff has also signed the document therefore there is no chance of fraud at all. All the original documents of suit property lie with defendant, as it is handed over by the plaintiff. It is clearly mentioned in the sale deed that Rs.29 lakhs is received by the plaintiff. The claim of fraud is got up to grab money from the defendant. Story of the plaintiff that the defendant lent Rs.5 lakhs on interest is also got up. No mention in the plaint that plaintiff has paid the alleged lent money with interest. One son of the plaintiff is residing at London, therefore, pleading that plaintiff was in need of money can't be believed. Bank statement suggests that she would not be able to pay Rs.5 lakhs. Moreover, no relief for cancellation is prayed. The prayer asked in present application, if granted, amounts to final decree at a stage where evidence is yet to lead, without proving the pleading and documents. The plaintiff has

filed writ before the High Court which is also withdrawn, looking the police report that no fraud is made out.

Ld. Advocate Mr.R.A.Parmar referred D.E.lists produced by both the parties in support of his submission, also relied on judgements of Hon'ble High Court and Apex Court, which is also considered, while deciding this application.

**(4.0) R E A S O N S :-**

**4.1** The application for injunction is equitable relief. While deciding such application the Court expects that the person who wants equity must do equity and must come with clean hand. Further, in so many words the three golden rule is appreciated time and again by Hon'ble the Apex Court and our High Court that there must be three elements in favour of a person who ask injunction in his favour, i.e. Prima facie case, Balance of convenience and Irreparable loss.

The judgement relied by the plaintiff is

required to be noted here cited as **(2010) 2 GLR 1041, Harshadkumar Bhalodwala V. Ishwarbhai Patel**; Observation in the said judgement is, while dealing with the injunction application the Court has to look into three aspect i.e. prima facie case, balance of convenience and irreparable loss in terms of money. If any of the three is absent, injunction cannot be granted. The judgement cited as **(2009) AIR(SCW)755, Kashi Math Samsthan V. Srimad Sudhindra Thirtha Swamy** also beneficial to quote; In this judgement also, Hon'ble Supreme Court once again discuss the three pillar i.e. prima facie case, Balance of convenience and irreparable loss, which requires consideration while deciding interim injunction application. All the three must be there for granting the injunction. One another judgement of Delhi High Court, cited as **AIR 1978 Delhi 174, Chandulal V. Municipal Corporation Delhi** wherein it is held; Para-38 of this judgement also reiterates the same that there must be prima facie case,

balance of convenience and irreparable loss. There must be legal right of the plaintiff and invasion of it.

**4.2** The plaintiff has come with a case that fraud is played by the defendant and in guise of agreement to sale, got the sale deed registered. To show the fraud played by the defendant, the plaintiff has argued that she has not been paid Rs.24,00,000/-. Had it been paid to her, the defendant must have some document or receipt of it. No wise person will pay a penny without taking receipt. If we look the sale deed, it is mentioned that on two different dates installment of Rs.12,00,000/- of each is paid to the plaintiff and last installment of Rs.5,00,000/- is paid by cheque to the plaintiff. Entry of cheque is produced by the plaintiff. But there is no separate document which can corroborate the payment, except the sale deed. Sale deed is a registered document. As per the note in the sale deed, it shows that sub registrar has verified and got

the contents put before or mentioned to the executants. Furthermore, it is argued that plaintiff is an illiterate lady, the defendant took a illegal benefit of ignorance of the plaintiff. It is also can't be believe because even if we believe that plaintiff is illiterate, but the sale deed Mark-4/1 showing that son of the plaintiff was present with her and identified the plaintiff before sub registrar by making signature on the deed as a witness.

**4.3** Furthermore, if we peruse the document sale deed Mark-4/1, it is mentioned unequivocally that the consideration is Rs.29,00,000/-, which is paid to the plaintiff. Consideration amount is mentioned on page-1, page-2, page-3 in para-1 & 3, page-7 para-14. Further on all the page in the footing area of the page, it is mentioned that it is deed of sale and consideration is Rs.29,00,000/-. Therefore, on the one hand oral submission of the plaintiff that fraud is played with her and on the other

hand the sale deed saying the payment of Rs.29,00,000/-. Why that much huge amount of Rs.24,00,000/- is paid by cash cannot be consider at this stage to believe case of the plaintiff prima facie.

**4.4** So far the possession of the suit properties is concerned the both the parties claiming that possession is with them. The substantiate claim of possession, the plaintiff produced photographs and video C.D., defendant has also produced video C.D. for showing his possession over the suit property. Both the parties have filed affidavits in their support. The sale deed speaking that the possession is handed over by the plaintiff to the defendant. It is rule of evidence that possession follows the title. The title deed is in favour of the defendant. It is submitted that the defendant has converted the land into non agriculture and started development work on the land, sowed trees on the property. The suit land is open land when it is transferred to defendant, the

photographs and C.D. produced by the plaintiff showing the quarrel and altercation between the parties, which cannot suggest that plaintiff still using the suit property. On the other hand the vedio C.D.produced on behalf of the defendant is going to show that development work is in progress, in some of the vedio the presence of the power of attorney holder is also there, which shows prima facie that possession is enjoyed by the defendant. The only argument which is having substance to show prima facie case is the consideration which is paid in cash to the tune of Rs.24,00,000/-, but at the same time, sale deed is endorsed by the plaintiff on each and every page particularly in the presence of his son. Therefore, the sale deed is on higher footing comparing the bear words that fraud is played.

**4.5** Further the arguments on behalf of the plaintiff that there is mistake in the name of plaintiff can't be of much value to doubt the transaction prima facie. The submission that

though the plaintiff is illiterate, knowing writing of the name and used to sign but there is thumb on the sale deed. This argument is also not incline to believe the case of the plaintiff prima facie, because it is not the case of the plaintiff that she did not go before registrar and make signature, but the say is only that the consideration mentioned in the deed, is not paid and intention was only to execute agreement to sale. Therefore, it doesn't help the plaintiff.

**4.6** The plaintiff come with a case that she is in need of money for medical treatment and business of son Bhavyesh, hence contacted defendant and take loan of Rs.5,00,000/- with condition to pay interest. It is nowhere mentioned in the plaint the details of the rate of interest, the period of alleged loan etc. Further son of plaintiff Mr.Bhavyesh is doing business in Diu. Mark-4/28 showing that Bhavyesh is running Bear Bar on rent. Person like Bhavyesh was with the plaintiff at the

time of execution of sale deed Mark-4/1, therefore also prima facie it cannot be believed that defendant played fraud.

4.7 Ratio of the other judgements cited by the defendant is discussed herein below:

**1.(2004) 72 DRJ 89, Panjab National Bank V. Iqbal Ahmed;** Ratio of this judgement is where final relief cannot be granted, interim relief is also barred. Herein the present we can't jump to the conclusion at this juncture that final relief may not be granted. No doubt, registered sale deed is executed in favour of defendant, but it is alleged to be made fraudulently, which can be evaluated on its own footing.

**2. (2002) AIR (Raj) 159, Shetrapal V. Smt. Renu;** In this judgement, the fact was that the plaintiff had long possession. On the other side the defendant having registered sale deed executed 20 years back. Therefore, the Court came to conclusion that balance of convenience is in favour of defendant. Above decision is

based on the peculiar facts of the case wherein the party failed to prove his settled possession. In the case on hand the sale transaction is entered into by the parties in the year 2018. Also, it is not the case of the plaintiff that her possession should be protected for she is in settled possession, but fraud is allegedly played with her. The case on hand involves the fact as to any fraud is played in executing sale deed or not. Therefore, is not helpful.

**3. 2010(1) GCD 242(Guj), Dharmeshkumar Purohit V. Ghanshyamdas Rangwani;** Decision of that case is based on the peculiar facts. The party who asked injunction bases his claim on the ground of adverse possession, but he has taken a plea that his possession is legal one, as he got the possession on dissolution of partnership firm. Documents don't reflect that the party is in possession. Therefore, injunction is denied against the lawful owner. In case on hand the fact is based on altogether different thing.

Defendant doesn't deny the previous ownership of the plaintiff. The dispute is with regard that whether fraud is played with the plaintiff or it is genuine transaction. Therefore, the observation doesn't help.

4. 2010(1) GCD 1 (Guj), Shashikant Natvarlal V. Arvindbhai Gohil; In this case the agreement was executed years back in the 1985 and the very agreement is challenged by its signatories therefore, the Court decline to accept. Further, it may be noted that the matter was finally decided by the trial court. Herein the present case, we are dealing the issue at the interim stage, where evidence is yet to come. Signature is not denied on the document but fraud is alleged, which requires evidence.

5. **(2010) 2 GLH 663, Somiben V. Ukabhai Patel;** Facts of this case is that the party remain silent for more than 18 years regarding the revenue entry. Further, it is observed that status quo order earlier granted was not in force, therefore the appeal was rejected.

Herein the present case on hand there is no fact of delay after knowing the fraud as alleged.

**6.(2005) AIR (Kerala) 298, George Jacob V. State of Kerala;** The judgement cited is in no way relevant to decide the present application of interim injunction. The judgement define the sale and its essentials.

**4.8** Thus, looking the transaction between the parties in totality, say of plaintiff lakes prima facie case. So also, the Balance of convenience, as development work is in progress on the spot. If the prayer asked in the present application is granted it would be more inconvenient, comparing the plaintiff. Evaluating the facts of the case, if injunction is granted in favour of the plaintiff, irreparable loss may occur to the developer of the land, who is purchasing the land for further selling. Therefore, it will be harsh, illogical if we prohibit the further alienation of property, which is purchased by the

businessman like the present defendant for further sale, only because the allegation of fraud. Hence, I am not inclined to grant the relief as prayed.

**4.9** At the same time, it is also to be looked that if the person like defendant sells the plots to others, it will result in multiplicity of proceeding. The strangers who doesn't know the pendency of this litigation, if purchase the plots, be unnecessary harassed. Therefore, keeping in mind the interest of third party if necessary direction is given to the plaintiff, it will serve the ends of justice.

**(5.0)** In the light of the above discussion, I am of the view that the application deserves to be dismissed with necessary direction to save the innocent third parties, hence, pass the following order.

**:: O R D E R ::**

1.Plaintiff's application Exb-5 is hereby dismissed.

2.It is directed to the defendant that in the event

of selling or any kind of alienation of any portion of the suit property to any person or legal entity, it is incumbent to mention substance of the dispute in the present litigation in the conveyance deed.

3. Cost shall follow the final decree.

Today pronounced in the open Court on January 16, 2021.

Una

**(Virendrasinh Gemalsinh Rana)**  
Principal Senior Civil Judge, Una  
GJ00964