

**Order below Exhibit-5**

1. This is an application for seeking temporary injunction filed by the plaintiff under order-39, rule-1 & 2 read with Section-151 of the Code of Civil Procedure, 1908, restraining the Defendants from interfering with the Plaintiff's possession and enjoyment of the suit property, viz., agricultural land admeasuring 1 Hectare 1-32-74 sq.m. out of Revenue Survey No. 19/Paiki 1 situated in Village Ankolali, Taluka Gir Gadhada, District Gir Somnath, and further restraining the Defendants from transferring, alienating, mortgaging, gifting, leasing, or otherwise dealing with the suit property pending the final disposal of the suit.

2. The summons/notices were issued against the defendant and were duly served to him. The defendants have appeared through the Ld. Advocate. The defendant No.1 and 2 have submitted their written statement vide exhibit-16 and 18 respectively.

3. Heard the Ld. Adv. - Mr.M.H.Bambhaniya for the plaintiff and Mr.P.D.Solanki for the defendant No.1 and Mr.K.T.Rathod for the defendant No.2. The Ld. Advocate of the plaintiff has submitted as per his oral arguments that the defendants should be prevented from doing so and temporary injunction be granted in favour of the plaintiff. He further contended that there is prima facie case in favour of the plaintiffs and the balance of convenience is also in favour of the plaintiff and if the temporary injunction would not be granted in favour of the plaintiff, the plaintiff will have to suffer irreparable loss which cannot be compensated in terms of money. Hence, he prayed for temporary injunction.

4. Heard the Ld. Adv. – Mr.P.D.Solanki and Mr.K.T.Rathod for the defendants and they have submitted as per their oral argument that the suit of the plaintiff should be dismissed with cost along with application for temporary injunction since it does not disclose any cause of action in favour of the plaintiff against the present defendant. They further contended that the plaintiff has failed to prove prima facie case in his favour and the balance of convenience is also not in his favour. They further contended that if the temporary injunction would be granted in favour of the plaintiff, there would be heavy loss to the resident of the other

societies and the same would not be compensated in terms of money. Hence, they prayed for rejection of application for temporary injunction.

5. On perusal of the whole record for final adjudication of the present application, following issues have been arisen:

1. Whether the plaintiffs establish prima facie case?
2. Whether the plaintiffs establish the balance of convenience in his favour?
3. Whether the plaintiffs establish that irreparable loss would be caused to them if injunction would not be granted?
4. What order?

6. My finding for above issues is as follows,

1. In negative.
2. In negative.
3. In negative.
4. As per final order.

**:- REASONS :-**

7. Issues No.1 to 3.

Since Issue No.1 to 3 are inter connected with each other for the sake of avoiding repetition I am discussing them together.

8. This is an application for temporary injunction and there are three basic principles for granting injunction i.e. Prima facie case in favour of the party seeking injunction, Balance of convenience in favour of such person and last there must be a irreparable loss which are likely to be caused to party if injunction is not granted to such person. Thus an injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. In addition to this three basic principles for granting or

refusing to grant injunction, the conduct of the person seeking injunction should also be taken into consideration because the granting of injunction is an equitable relief and is drastic or serious order and there are two basic maxims of equity which are important to be considered at the time of deciding injunction application which are “He who seeks equity must do equity” and “He who comes to equity must come with clean hand”.

**9.** Now, the plaintiff in the application on hand and in his plaint have stated and submitted that the Plaintiff has instituted the present suit seeking only a declaration that the Registered Sale Deed No. 819 dated 07.10.2024 executed in favor of Defendant No.1 and the subsequent Registered Sale Deed No. 388 dated 16.04.2025 executed by Defendant No. 1 in favor of Defendant No. 2 are null and void, along with recovery of possession of the suit property from the Defendants. Notably, no relief for permanent injunction is prayed for in the plaint. The Plaintiff avers that he borrowed Rs. 18,00,000/- from Defendant No.1 on 11.11.2022 at an interest rate of 4% per month i.e. Rs. 72,000/- monthly, and has repaid a total of Rs. 26,84,000/- towards interest in cash and through online transfers via Nareshbhai Devshibhai Parmar, brother of Defendant No. 2. The Plaintiff claims that the first sale deed was executed solely as security for the loan, without any consideration passing, and that possession of the suit property remains with him, where he resides with his family in a pucca house. In support, the Plaintiff relies on an Undertaking/Guarantee Deed dated 12.12.2024 of Mark 4/3 executed by Defendant No. 1 on a Rs. 300/- stamp paper, wherein Defendant No. 1 allegedly admitted the transaction as one for loan security and promised to reconvey the property upon repayment within two years. The Plaintiff further alleges fraud and breach of trust by the Defendants, supported by complaints lodged at Gir Gadhada Police Station on 12.06.2025 and 10.07.2025 vide Mark 4/4, though incomplete, and a public notice in a newspaper vide Mark 22/1.

**10.** The defendant No. 1 has submitted his written statement vide Exhibit – 16.

The defendant has stated in his written statements and the Defendant No. 1 denies any loan transaction, asserting that the first sale deed was a genuine sale for consideration of Rs. 3,50,000/-, partly in cash and partly by cheque No. 263607 of Bank of Baroda, Una Branch, with possession handed over. She claims the Undertaking of Mark 4/3 was extracted under

duress and is illegal. She relies on revenue proceedings where the Plaintiff withdrew objections and submitted an apology affidavit dated 12.12.2024 of Mark 17/6 and order of the Deputy Collector, Una, dated 24.12.2024 in RTS Case No. 79/2024 vide Mark 17/7, certifying the mutation in her favor. Defendant No.1 further submits letters from revenue authorities vide Marks 17/1 to 17/4 and the Plaintiff's affidavit dated 11.12.2024 vide Mark 17/5 acknowledging receipt of full consideration.

The defendant No. 2 has submitted his written statement vide Exhibit – 18.

The defendant has stated in his written statement and the Defendant No. 2, claiming to be a bona fide purchaser for value without notice, asserts that he purchased the suit property from Defendant No.1 via the second sale deed for valid consideration, with mutation certified in revenue records of Village Forms 6, 7, 8-A, and 12 at Marks 19/1 to 19/4. He denies knowledge of any loan and alleges the suit is frivolous, motivated by the Plaintiff's criminal history i.e. cheque bounce cases involving his son.

**11.** The plaintiff have submitted documents vide mark-4/1 to 4/4 and 22/1 and the defendant No. 1 has also produced documentary evidence vide Mark 17/1 to 17/7 and the defendant No.2 has also produced documentary evidence vide Mark 19/1 to 19/5 which have been perused. Each party's Ld. Advocate also made oral and written arguments, and the Ld. Advocate for the plaintiff has also submitted a counter-affidavit vide exhibit-23 that is also perused.

**12.** Looking to the material on record, the Plaintiff's Ld. Advocate argued that a prima facie case exists as the Undertaking of Mark 4/3 evidences the transaction as a security for debt, not a sale, invoking Section 54 of the Transfer of Property Act, 1882, which defines "sale" as a transfer for consideration without intent to secure a debt. Reliance was placed on the Plaintiff's continued possession and repayment records, contending irreparable injury to his livelihood as a farmer if alienated, with balance of convenience in his favor.

Defendant No. 1's Ld. Advocate contended no prima facie case, as the sale deeds are registered and mutations certified, with the Plaintiff admitting receipt of consideration in revenue proceedings of Mark 17/6. The Undertaking was dismissed as coerced, invoking

Section 16 of the Indian Contract Act, 1872. It was further argued that the application is not maintainable absent a prayer for permanent injunction in the suit. Balance of convenience was argued in favor of the Defendants, as injunction would prejudice a retired widow.

Defendant No. 2's Ld. Advocate emphasized his status as a bona fide purchaser under Section 41 of the TPA, protected against prior equities, with revenue records confirming title and possession. No prima facie case or irreparable harm to the Plaintiff was urged, as the suit is barred by delay and unclean hands as non-joinder of Nareshbhai. It was submitted that temporary injunction cannot be granted without a corresponding prayer for permanent injunction in the plaint.

**13.** Now, from the above discussion, the suit seeks only declaration under Section 34 of the Specific Relief Act, 1963, and recovery of possession under Sections 5 or 6 thereof, without any prayer for permanent injunction under Section 38.

The Hon'ble Supreme Court in the judgement of **Dorab Cawasji Warden v. Coomi Sorab Warden, AIR 1990 SC 867** has held that the relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy- until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines.

Further, Section 37 of the Specific Relief Act, 1963, provides that temporary injunctions are regulated by the CPC but presuppose a suit where permanent injunction is a possible outcome. Absent such a prayer, the application is not maintainable, as it seeks relief beyond the suit's scope, violating Order VII Rule 7 CPC (reliefs must be specifically claimed) and Order II Rule 2 CPC (omission of relief bars future claims). Granting it would amount to molding relief not claimed, contrary to natural justice. The prayer for possession implies the Plaintiff admits dispossession or seeks recovery from Defendants, rendering a restraint on interference with possession contradictory and impermissible without trial. Even for restraint

on alienation, it cannot stand alone without foundational injunctive relief in the plaint. Further, it is held by the Hon'ble Supreme Court in the judgment of **Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira, (2012) 5 SCC 370** that in the broad category of prima facie case, it is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must be governed by the prima facie case. In grant and refusal of injunction, pleadings and documents play vital role. Thus, the application fails at the threshold.

Further, even for the sake of the arguments for maintainability, the triple test fails. The suit for possession admits Defendants' control, so status quo favors them. The Undertaking of Mark 4/3 raises a triable issue under Section 58(c) TPA i.e. mortgage by conditional sale, but the Plaintiff's revenue admissions of Mark 17/6 and lack of contemporaneous challenge weaken it. Revenue mutations of Marks 19/1-19/4 are presumptively valid. Defendant No. 2's bona fide claim under Section 41 TPA requires trial. Thus, plaintiff is failed to establishment of prima facie case.

Further, granting injunction would alter status quo, causing hardship to Defendants, while Plaintiff can seek damages if successful. Thus, balance favors Defendants and alienation risks are compensable; no irreparable harm, as suit reliefs suffice without interim restraint.

**14.** In view of the above discussions and reasons assigned and in discussion of point no. 1 to 3 by me, this Court is of the view that the facts and circumstances of the present case do not warrant invoking inherent power of Section 151 of the Code of Civil Procedure, 1908, as amended by the Code of Civil Procedure (Amendment) Act, 2002 and there is no prima facie case of the Plaintiffs to grant interim relief(s) under its discretionary power in favour of the Plaintiffs. The demand of natural justice is too to reject the interim application at Exh.-5 of the Plaintiffs.

Hence, I pass the following Final Order:-

**FINAL ORDER**

- 1.** The application for temporary injunction filed by the plaintiffs is hereby rejected.
- 2.** Cost of the application shall follow the result of the suit.

Pronounced in open Court on this day of 31<sup>st</sup> of January, 2026.

Gir Gadhada.  
Date : 31.01.2026.

**(H.M.Vaishnav)**  
Principal Civil Judge &  
J.M.F.C., Gir Gadhada.  
**(Code No. GJ01530)**