

RCS NO. 02/2015ORDER BELOW EXHIBIT NO. 5

- (1) The present Application is filed by the Plaintiffs of this Suit. Heard the Ld.Advocate Mr. P.M.Khunti for the Plaintiff and Mr. J.J.Gondaliya for the Defendants. The brief facts of the Suit and the Application are as under.
- (2) As per the say of the Plaintiff, that the Defendants Father died on Dt. 26-03-2013 and that the Father of Defendants had conducted a Deed of Agreement for Sale in the favour of present Plaintiffs on Dt. 30-03-1992 and as per that deed the deceased father of the Defendants had sold his Land i.e. Land bearing Account No. 1219 of Revenue Survey No. 370, 1-25-45 Hectar Appr. Square meter, whose Four directions of the above Land is mentioned in the Suit, to the present Plaintiffs on the above date and also that as per the above Deed the whole sale was conducted in Rs. 35,000/- out of which Rs. 30,000/- were given in Cash as earnest money to the deceased father of the Defendants and Rs.5000/- was to be given during the Final Sale Deed. At that time both the parties had agreed the above Deed of Agreement and consented the conditions of the same.
- (3) The Plaintiffs had good relations with the Defendants and hence had confidence on the Defendants that they would conduct

the Final Sale Deed as and when required. Also that the Plaintiffs had demanded several times from the Defendants to conduct the Final Sale Deed but the Defendants presented different excuses and hence wasted time for the same. At last after the death of the Father of Defendants, all the defendants had divided the above question Land and have transferred the above Land on their Names. The present question Land is in our possession and even after several reminders to the Defendants, for conduction of the Final Sale Deed of the above Land which is in the possession of present Plaintiffs from more than 20Years, the Defendants have not conducted the Final Sale and hence as such the present Defendants were in mood of transferring the Land, the cause of action of present Suit has arisen .

(4) Also that the Plaintiffs are ready to pay Rs.5000/- to the defendants as per the condition of Deed of Agreement and perform their part and hence the Defendants are not ready to perform their part and hence the present Suit is filed for performance of Specific Contract.

(5) Also that the Plaintiffs have produced the above Deed of Agreement dated 30-03-1992 and hence have pleaded to order the Defendant to perform their function and conduct the Final Sale Deed in the favour of the present Plaintiffs.

(6) Now at present the aforesaid Application is filed by the Plaintiff and following relief is sought.

(A)To grant Interim Injunction that the Defendants do not take the

possession of the questioned Land i.e. Agricultural Land situated in Satapar, Taluka Jamjodhpur, bearing Account No. 1219 Revenue Survey No. 370, Land admeasuring 1-25-45Hectare.App.Square Meter and do not Sale, Mortgage or Gift the aforesaid Land.

- (7) In respect of this Application the Defendants were duly served with the Notice and Defendants had filed Written Statement vide Ex. 14. The Defendants have mostly denied the averments of the Plaintiffs, that the present Suit does'nt have cause of action, the said Suit be dismissed on the ground of Non Joinder of Necessary Parties.
- (8) The Plaintiffs have not come with clean hands and have suppressed the real facts and have mis represented the Court and with this intention wants to take the disadvantage of process of law. The Plaintiffs have relied upon a Deed of Agreement dated 30-03-1992, and prima facie it is clear that the above deed cannot be legally enforced as such it is Time Barred. Moreover the above Deed of Agreement is not registered one and as per the present position of Law the same should be registered and hence also the prayer of the Plaintiffs should be rejected.
- (9) The Defendants deceased Father was in the possession of the question Land after his death the Defendants are in the possession and that all the government dues are paid by the Defendants also the Four Directions mentioned by the Plaintiffs of the question Land is false.
- (10) Also as per the say of the Defendants, the deceased father of

the Defendants had applied in the Mamlatdar Court and had conducted the process of entries of names of the Defendants, as such the Defendants were the direct Legal Representatives of the deceased, Govindbhai Jerambhai, and during this process also the Plaintiffs of this Suit had taken objections against the same vide Objection App. No. 28/13 which was decided by the Mamlatdar Court and the order was passed in the favour of present Defendants and entries were done as per this order in Revenue Office vide Letter of Right Entry No. 5906 date 07-02-2013. The aggrieved Plaintiffs had preferred Appeal against this Order in the Office of Deputy Collector, Lalpur vide Appeal No. 01/2013-14 which was also decided by the Deputy Collector, Lalpur on Dt. 30-11-2013 and the same was also in the favour of present Defendants. Further more to harras us, the present Plaintiffs have preferred Appeal No. 212/13-14 in the Court of Collector, Jamnagar, which is pending till date. The above facts are suppressed by the present Plaintiffs and hence also adverse inference be taken.

(11) Moreover the Defendants, have pleaded that as such the decisions of the questioned Land was given by the Mamlatdar, Jamjodhpur and Deputy Collector, Lalpur and also the litigation is pending in the Collector, Jamnagar, the Government of Gujarat is necessary party to the Suit and the same are not joined as parties and hence also the prayer of the Plaintiffs be rejected with Cost. Also that the Court Fee should be paid on the market rate of the question Land, but that also is not paid hence also the Suit be dismissed.

(12) If the present application of the Plaintiff is allowed then the

Defendants would suffer a great loss and ownership right of the Defendants would suffer and if the same is not allowed then the Plaintiffs would not suffer any Legal injury and that the Plaintiffs will succeed in their malice intention and that the Defendants will have to suffer loss which could not be compensated in terms of money. Also there is no Prima facie case of the Plaintiff and that the Defendants are in the possession of the question Land and hence also the Suit of the Plaintiffs be dismissed with Cost.

(13) Documentary Evidence produced by the Plaintiff side:

Sr.No	Description of Document	M/Ex.
01	The Copy of Deed of Agreement in favour of Plaintiff dt. 30-03-1992	M4/1
02	The Copy of 8-A of the question Land	M4/2
03	The 7/12 of the question Land	M4/3
04	The copy of Village Statement No.12	M4/4
05	The slip of depositing Tax	M4/5
06	The Copy of death Certificate of the Defendants Father	M4/6
07	The Bill of Patidar Fertilizer	M24/1
08	The Bill of Agrocenter, Satapar	M24/2
09	The Bill of Agrocentre, Satapar	M24/3
10	The Bill of insecticides	M24/4
11	The Bill of Agrocentre, Satapar	M24/5
12	The Bill of Bij Nigam	M24/6
13	The Bill of insecticides	M24/7
14	The Bill of Sahakari Mandli, Satapar	M24/8
15	The Bill of Kishaan Fertilizer	M24/9
16	The Bill of Paatidar Fertilizer	M24/10
17	The Bill of Sahakari Mandli, Satapar	M24/11

Documentary Evidence produced by the Defendant Side

Sr.No	Description of Document	M/Ex.
01	The Copy of the revenue slip paid by the Defendants of the question Land	M18/1
02	The Village Statement No. 6,statement of right, entry no. 5906,original	M18/2
03	The order of Deputy Collector confirming the entry no. 5906	M18/3
04	The Plaintiffs had preferred appeal in the Collector Court against the order of Deputy Collector, the notice of the same.	M18/4

The above Documentary evidence are produced by both the parties and the same are considered.

(14) Looking to the above facts the following Issues arise for the disposal of the said application.

- (A) Whether the Plaintiffs proves that they have a Prima facie case against the Defendants ?
- (B) Whether the Plaintiffs proves that Balance of Convenience is in their favour ?
- (C) Whether the Plaintiffs proves that they will suffer irreparable injury if the said application is not granted?
- (D) What Order?

My findings to the above Issues are as under.

- (A) In Partly Affirmative.
- (B) In Partly Affirmative.
- (C) In Partly Affirmative.
- (D) As per final Order.

(15) **∴ Reasons ∴**

∴ Issues A, B and C ∴

To avoid repetition of facts and as such all the Issues from A to C are correlated hence the same are discussed together. Looking to the above averments of both the parties and the above documents produced as mentioned, by the Plaintiff side and that of Defendant side and of all the submissions, following facts are surfaced.

As per the say of the Plaintiff, that the Defendants Father died on Dt. 26-03-2013 and that the Father of Defendants had conducted a Deed of Agreement for Sale in the favour of present Plaintiffs on Dt. 30-03-1992 and as per that deed the deceased father of the Defendants had sold his Land i.e. Land bearing Account No. 1219 of Revenue Survey No. 370, 1-25-45 Hectar Appr. Square meter, whose Four directions of the above Land is mentioned in the Suit, to the present Plaintiffs on the above date and also that as per the above Deed the whole sale was conducted in Rs. 35,000/- out of which Rs. 30,000/- were given in Cash as

earnest money to the deceased father of the Defendants and Rs.5000/- was to be given during the Final Sale Deed, the said deed is produced vide M4/1. At that time both the parties had agreed the above Deed of Agreement and consented the conditions of the same. The Plaintiffs had good relations with the Defendants and hence had confidence on the Defendants that they would conduct the Final Sale Deed as and when required. Also that the Plaintiffs had demanded several times from the Defendants to conduct the Final Sale Deed but the Defendants presented different excuses and hence wasted time for the same. At last after the death of the Father of Defendants, all the defendants had divided the above question Land and have transferred the above Land on their Names, the death certificate of the defendants father is produced vide M 4/6. The present question Land is in our possession and even after several reminders to the Defendants, for conduction of the Final Sale Deed of the above Land which is in the possession of present Plaintiffs from more than 20Years, the Defendants have not conducted the Final Sale and hence as such the present Defendants were in mood of transferring the Land, the cause of action of present Suit has arisen . Also that the Plaintiffs are ready to pay Rs.5000/- to the defendants as per the condition of Deed of Agreement and perform their part and hence the Defendants are not ready to perform their part and hence the present Suit is filed for performance of Specific Contract. Also that the Plaintiffs have produced the above Deed of Agreement dated 30-03-1992 and hence have pleaded to order the Defendant to perform their function and conduct the Final Sale Deed in the favour of the present Plaintiffs.

(16) As per the say of Defendants, Plaintiffs have not come with clean hands and have suppressed the real facts and have misrepresented the Court and with this intention wants to take the disadvantage of process of law. The Plaintiffs have relied upon a Deed of Agreement dated 30-03-1992, and prima facie it is clear that the above deed cannot be legally enforced as such it is Time Barred. Moreover the above Deed of Agreement is not registered one and as per the present position of Law the same should be registered and hence also the prayer of the Plaintiffs should be rejected. The Defendants deceased Father was in the possession of the question Land after his death the Defendants are in the possession and that all the government dues are paid by the Defendants also the Four Directions mentioned by the Plaintiffs of the question Land is false. Also as per the say of the Defendants, the deceased father of the Defendants had applied in the Mamlatdar Court and had conducted the process of entries of names of the Defendants, as such the Defendants were the direct Legal Representatives of the deceased, Govindbhai Jerambhai, and during this process also the Plaintiffs of this Suit had taken objections against the same vide Objection App. No. 28/13 which was decided by the Mamlatdar Court and the order was passed in the favour of present Defendants and entries were done as per this order in Revenue Office vide Letter of Right Entry No. 5906 date 07-02-2013 which is produced vide M18/2. The aggrieved Plaintiffs had preferred Appeal against this Order in the Office of Deputy Collector, Lalpur vide Appeal No. 01/2013-14 which was also decided by the Deputy Collector, Lalpur on Dt. 30-11-2013 and the same was also in the favour of present Defendants which is produced vide M18/3. Further more to harass us, the present

Plaintiffs have preferred Appeal No. 212/13-14 in the Court of Collector, Jamnagar, which is pending till date. The above facts are suppressed by the present Plaintiffs and hence also adverse inference be taken. Moreover the Defendants, have pleaded that as such the decisions of the questioned Land was given by the Mamlatdar, Jamjodhpur and Deputy Collector, Lalpur and also the litigation is pending in the Collector, Jamnagar, the Government of Gujarat is necessary party to the Suit and the same are not joined as parties and hence also the prayer of the Plaintiffs be rejected with Cost. Also that the Court Fee should be paid on the market rate of the question Land, but that also is not paid hence also the Suit be dismissed.

- (17) Taking into account the above facts of the present Case the question that needs to be determined at this Interim Stage is that, Whether the Deed of Agreement for Sale was conducted on Dt. 30-03-1992 or not and as per the deed the Plaintiffs are entitled for interim relief or not ?

The Plaintiffs have mostly relied upon the document produced vide M4/1 which is the Deed of Agreement for Sale of the question Land. Now if we minutely take into consideration the document of M4/1 then it is crystal clear that the said agreement was conducted in the Year 1992, also that the aforesaid agreement is written on simple Stamp Paper of Rs.10/ and the same also is neither notarised nor the same is registered. As such the present position of Law doesn't requires the above document to be registered, but the Date on which this agreement was conducted was Dt. 30-03-1992. The present Plaintiffs have pleaded that they had orally requested the

Defendants to conduct the Final Sale but the Defendants had given different excuses and had not conducted the Final Sale. Moreover, the Plaintiffs have orally submitted that they have produced Affidavit of Shri Ratansinh Madhabhai vide Ex. 25 and that he has clearly mentioned in his above affidavit that the Deed of Agreement i.e. Document of M4/1 was written by this Ratansinh. Now if we take into consideration the above affidavit and compare the same with Deed of M4/1 then it can be seen that the above person has endorsed the above deed as Witness but the same was written by him cannot be seen from the document of M4/1, hence at this interim stage rather going in the merits of the Case the aforesaid Affidavit strongly supports the Plaintiffs Case. Also that the Plaintiffs have submitted that they are ready to perform their part if the Defendants are ready to perform their part. Also that the Defendants have strongly relied on the Orders of Mamlatdar Court and Deputy Collectors Orders which are produced vide M 18/2 and M 18/3, but if we take into consideration the document of M18/3, then it is clearly mentioned that Plaintiffs can obtain relief from Civil Court by Suit of Specific Performance. Moreover the Orders passed by the Mamlatdar Court or Deputy Collector are not binding to this Court. The Defendants have strongly relied on the fact that the Agreement of Sale Deed produced vide M 4/1 is on simple Stamp Paper and the same is not Notarised also, but at this juncture it is very essential to go through the Provisions of Section 49 of The Registration Act, 1908, which says that “ **Effect of non-registration of documents required to be registered** : No document required by section 17 [or by any provision of the Transfer of Property Act, 1882] to be registered shall -

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collatera transaction not required to be effected by registered instrument.] Thus this provision makes it clear that at this stage and in the aforesaid Suit the unregistered document would not affect the Case of the Plaintiffs. Moreover at this interim stage the Defendants have not adduced a single defence that the said agreement Deal is a forged one, but simply they have objected this document because the same is on simple stamp Paper and is not notarised or registered one, but as above, the provision is itself clear hence at this interim stage before going into the merits of the Case if we consider the document produced vide M4/1, then it is crystal clear that Govindbhai Jerambhai the father of Defendants had conducted this agreement and the same was conducted in the favour of Bhovanbhai Somabhai and Kurjibhai Somabhai, i.e the present Plaintiffs. Hence this document of M4/1 shows that the Plaintiffs have a Primafacie Case. Also that if at this interim stage if considering the above document of M4/1, if the Plaintiffs are given

relief then the Defendants are not in loss because the effect of this Interim Order is not a Final One and hence balance of convenience is also in the Plaintiffs favour. Moreover suppose if we reject the Interim Application then the Defendants would enter in agreement with other parties and hence the Plaintiffs will have to suffer irreparable Loss and on the other hand by granting this interim benefit to the Plaintiffs, the Defendants would not loose their Case and that Plaintiffs would not win the Case on hand. Moreover both the parties have not produced any authorities of Apex Court and that the Plaintiffs have pleaded that they are ready and willing to perform their part of contract from the date of agreement till date of institution of Suit.

Henceforth of all the above discussions my findings to Issue No. A to C is in Partly Affirmative and for Issue No. D, I pass the following Order in the Interest of Justice.

:ORDER:

- (1) The Interim Injunction Application of the Plaintiff is hereby allowed partly and the Defendants are hereby ordered to not to enter in Sale, Mortgage or Gift the questioned Land i.e. Agricultural Land situated in Satapar, Taluka Jamjodhpur, bearing Account No. 1219 Revenue Survey No. 370, Land admeasuring 1-25-45Hectare.App.Square Meter untill the final disposal of the Suit.

(2) The Plaintiffs of this Suit are hereby ordered to conclude their evidence within 45 (Fourty-Five) Days from the Date of framing of Issues and if they fail to do so the aforesaid Order will have no effect on either Parties of the Suit.

(3) No order as to Cost.

Signed and pronounced in the open Court today on this 15th day of May 2015.

Date: 15/05/2015
Place: Jamjodhpur

[ANAND H. TRIVEDI]
Code No. GJ01325
Principal Civil Judge,
Jamjodhpur.