

**IN THE COURT OF 11th ADDITIONAL CIVIL JUDGE,
JUNAGADH**

RCS- 324/2021

**Pramukh Realities through its partner,
Riteshbhai Vinodray Bhatt**

.....Plaintiff

Vs.

Kanchanben Santilal Kalola

.....Defendant

ORDER BELOW EXHIBIT-5

1. The present suit has been filed by the plaintiff under section 31 of the specific relief act, seeking the relief of cancellation of sale deed and permanent injunction. The plaintiff has filed an application under order 39, Rule 1 & 2 seeking interim injunction and has prayed in the application that the shall not sell, mortgage, gift, transfer or assign the disputed property to the third party or create any rights of the third party till the final disposal of the suit.
2. The brief facts of the case are that the plaintiff is the partner in the partnership firm pramukh realities involved in the business of sale, purchase and construction of the flat, house and godowns. The partnership firm sold the Medical hall no.3 paiki 3 bearing shop no.203 , admeasuring approx. 13-38 Sq.Mtr and medical hall no. 3 paiki 4 bearing shop no 4, admeasuring approx 23-51 Sq. Mtr, on the second floor of the pramukh plaza for consideration of Rs. 10,00,000/- by a registered sale deed no. 6886 dated 18/9/2018, in favour of the defendant kanchanben shantilal kalola. A cheque no 3 dated 17/9/2018 of the HDFC bank, Junagadh amounting to Rs. 10,00,000 was issued by the defendant in favour of the plaintiff as consideration. The plaintiff has

further stated that the defendant told him not to encash the cheque as he did not have sufficient balance in his account. Thereafter he also promised the plaintiff that he will give him another cheque for consideration. He made several excuses for payment of the consideration and assured payment by another cheque. It is the say of the plaintiff that the defendant has not paid the said consideration amount and is in possession of the disputed property hence has brought the present suit.

3. The notice was issued to the defendant and he has filed his written statement and the reply to the present application vide Ex- 9. The defendant has contended that the plaintiff has nowhere mentioned in his plaint that the firm is a registered partnership firm and an unregistered partnership firm does not have any right to file the suit. Moreover, there is no authorization letter to the present partner to file the suit on behalf. It is the say of the defendant that the defendant is in possession of the suit property through the registered sale deed no 6886/18 dated 18/9/18. It is further contended by the defendant that the sale deed was executed on 18/9/18 and therefore the present suit for cancellation of sale deed can be filed only till 18/9/21 i.e. within three years of the registration of sale deed. The defendant has further pleaded that he has already paid the amount of consideration in cash to the plaintiff and the cheques are being misused by the plaintiff. Thus has prayed to dismiss the present application.
4. The plaintiff has presented following documents vide Exh-4 in support of the suit and application. (1) Partnership deed of the plaintiff firm vide mark 4/1, (2) Sale deed no 6886 dated 18/9/18 by the plaintiff in favour of defendant vide mark 4/2, (3) Cheque no 3 of HDFC Bank vide mark 4/3, (4) Legal notice by the plaintiff to the defendant dated 9/9/21 vide

mark 4/4, (5) Registered A.D. Slip vide mark 4/5 (6) Track report of the service of notice vide mark 4/6. The defendant has not presented any document in support of reply.

5. Ld. advocate for the plaintiff has presented written arguments for the application. Heard Ld. advocate Mr. J.H. Dhamani for the defendant.
6. Ld. Advocate Mr. P.H.Renuka has in his written arguments has majorly repeated the contentions in his plaint and the application for interim injunction and has prayed that the defendant be prevented from transferring the suit property to third party and creating the rights of the third party. The defendant may sell the suit property and plaintiff will not be able to recover the amount of consideration that he owes. Thus prayed to allow application seeking the interim injunction.
7. The Ld. Advocate Mr. J.H.Dhamani, on behalf of the defendant has submitted that, the defendant is in possession of the suit property and has obtained the possession through the sale deed in his favour. Moreover, there is no mention of the non receipt of the payment in the sale deed. The defendant has no intention of selling the suit property and is using it for his own purpose. He has further contended that the defendant has brought the suit after 3 years of registration of sale deed and hence has also raised the point of limitation. He has further submitted that even if it be considered that no consideration is paid, then also it is loss of money which can be compensated and therefore the element of irreparable loss is not fulfilled and in such a case no injunction can be granted. Thus has prayed to dismiss the application.
8. Read the plaint, the application for the interim injunction vide exhibit 5, the written statement of the defendant, the written arguments of the plaintiff for the interim injunction and perused other records of the case.

The following issues arises for consideration before me for deciding the application filed vide exhibit 5.

1. Whether the plaintiff proves that there is a prima facie case?
2. Whether the plaintiff proves that the balance of convenience lies in his favour?
3. Whether the plaintiff proves that he will suffer an irreparable loss which cannot be compensated in terms of money if his prayer for injunction is disallowed?
4. What order?

9. Following are my decisions for the issues framed above.

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

REASONS

10. Above issues are interconnected and interlinked with each other and findings of one issue depend upon another and to avoid frequent repetition of the facts; I have decided to discuss the above issues together by common discussion and reasoning for the sake of convenience.

11. It is a well settled law that before granting the temporary injunction the three basic principles for granting or refusing to grant a temporary injunction should be considered by the court. The three principles are prima facie case in favour of the party seeking injunction, balance of convenience in favour of such person and last there must be an irreparable loss which are likely to be caused to the 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 these 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 a drastic or serious order. Also, 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 hands.

12. Moreover, Order 39 Rule 1 of the CPC (1). provides for the grant of temporary injunction -where in any suit it is proved by affidavit or otherwise-(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, (C) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit. , the court may be order grant temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit, until the disposal of the suit or until further orders.
13. On perusal of the records, following facts come to the light.

- a. The plaintiff has executed a sale deed vide registration no. 6886/2018 dated 18/9/18 in favour of the defendant for the disputed property for a consideration of Rs. 10,00,000/-.
- b. The defendant had given the cheque of Rs. 10,00,000/- to the plaintiff dated 17/9/18 i.e. a day before the date of registration of the sale deed.
- c. The plaintiff has filed the true copy of the sale deed which is marked as mark-4/2. In which the para no. 6 of said sale deed is disclosed that plaintiff has handed over the physical possession of both the property to the defendant. The plaintiff has also pleaded in his plaint that the possession of the suit property is with the defendant.
- d. In the said sale deed in the paragraph no. 5, the plaintiff has disclosed that he has received the amount of consideration from the defendant through cheque and is giving the receipt of the same and has no objections as to the consideration between the parties.

14. Looking to the facts and circumstances of the case and the considering the averments made by the plaintiff in his plaint and the contentions raised by the defendant, it can be seen that the sale deed was executed on 18/9/18 and the suit for cancellation of sale deed can be filed only within 3 years from the date of registration of sale deed. Thus, prima facie it appears from the records of the case at this stage that the suit of plaintiff is barred by law of limitation. However, the question as to the limitation being a mixed question of law and fact cannot be decided at this stage. Moreover, the plaintiff has only claimed the relief of cancellation of sale deed and permanent injunction, but has not claimed the relief of the possession. However, proviso to section 34 of the Specific relief act provides that the no court shall make any such

declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. The case of the plaintiff, prima facie appears to be not maintainable as there cannot be a suit for declaration simpliciter, without claiming the relief of the possession, where the possession lies with the defendant. The same is supported by the decision laid down by the Hon'ble Apex court in *Anathula Sudhakar v. P Buchi Reddy (dead) by LRs* (2008) 4 SCC 594, Wherein in the para 11 it was held that A person out of the possession cannot seek the relief of injunction simpliciter without claiming possession. In "*Dalpat Kumar v. Prahlad Singh*", (1992) 1 SCC 719, the Hon' ble Supreme Court held that the phrases "Prima facie case," "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The Courts should be circumspect before granting the injunction and look at the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused. In the present case, the plaintiff has failed to show a prima facie case. The averments made by plaintiff as to non payment of consideration requires a decision on merits.

15. Moreover, the plaintiff has produced the sale deed vide mark 4/2, in which the plaintiff has disclosed that he has received the total amount of consideration and has also handed over the possession to the defendant. It thus prima facie appears from the case that the defendant has become the rightful owner of the suit property by paying the consideration. The averments made by the plaintiff as to the consideration in his plaint are the matter of evidence and cannot be considered at this stage. Restraining the defendant from alienating the suit property would affect

his right to property conferred to him through the sale deed. The balance of convenience, thus, does not lie in the favour of the plaintiff nor the plaintiff has succeeded in proving the irreparable loss.

16. In Chandra Darshan Developers Through Partner Versus Hiralal Gopalbhai R/Appeal From Order No. 73 Of 2022, *It was held by the Hon'ble Gujarat High Court that, "Now it is well settled that the prayer for granting of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its denial by the defendants. The Court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated, is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience lies".*"

17. Hence, as per above discussion, when the plaintiff fails to show prime facie case regarding his right, title and interest in the suit property and also, in such circumstance the balance of convenience and the aspect of irreparable loss does not appear in favour of the plaintiff. Therefore, the present application is found to be devoid of merits and therefore, required to be rejected. Therefore for issue no 1, 2 & 3 my answer is in negative and the following final order is passed for issue no. 4

::ORDER::

1. The application filed by the plaintiff vide Exhibit-5, seeking interim injunction under Order 39 Rule 1 & 2 is hereby rejected.
2. The cost of the application shall follow the cost in the final disposal of the suit

Order pronounced in the open court on the 1st day of March, 2024.

JUNAGADH

Date:- 1/3/2024

(Prerana Rajesh Chhapia)

11th Addl. Civil Judge

Junagadh