

1) This is an application filed by the plaintiff for temporary injunction under Order 39 Rule 1 and 2 and section 151 of the code of Civil procedure, 1908 for restraining defendants from interfering possession of plaintiff over suit property and or transferring the suit property in any mode.

2) Summons and notice were issued to the defendants which were duly served to them. The defendants have appeared before the court through learned advocate Mr N.P. Kathad. The defendant No-01 has filed his written statement cum reply to present application vide exhibit 14 and document in support of his written statement vide exhibit 15. Defendant No- 2 and 3 have filed their written statement cum reply to present application vide exhibit 16 and and documents in support of their written statement vide mark 17/1 to 17/ 8.

3) After filing the written statement by all the defendants plaintiff has filed a counter affidavit vide exhibit-19.

Plaintiff has submitted documents in support of his suit and present application vide mark 4/ 1 to 4/ 7.

4)Plaintiff in support of his present application has filed written argument vide exhibit-20.Heard learned advocate for plaintiff. He has submitted as per the written arguments. In support of his written argument plaintiff has submitted various judgements of Honourable Gujarat High Court (a) kantibhai survey Patel versus Chandrakant Ishwarbhai Patel, 2005 lawsuit into bracket (Gujarat) 206, (b)Naval Ram Lakshmi Das Dev Murari versus Vijaya Bank Chavda 1997 (1) GLH 841, (c)Ibrahim Shah Mohammad versus Noor Ahmed Noor Mohammad 1983 lawsuit (Gujarat) 34.

Learned Adv. for plaintiff has submitted that the suit property was originally owned by Ghanchi Ismail Hasam Pirji. He was the ancestor of defendant No-2 & 3. Late Ganchi Ismail Hasam Pirji by way of two different registered sale deed No- 449 and 450 in year of 2000 sold said property i.e. in equal half area of said land bearing survey number 1403/1 to Noorbai Dawood kalvat+5 others and one other namely Hajrabai

Dhameriya. Thereafter by way of register sale deed No-1033 and 1034 dated 10/5/2004 said disputed property was purchased by present plaintiff from Noorbai Dawood kalvat+5 others and Hajrabai Dhameriya vide above stated registered sale deed numbers respectively. Learned advocate for plaintiff has submitted that since then title and possession of disputed property belongs to present plaintiff. Further he has submitted that it is the duty of the revenue authority to mutate the entry in revenue record as and when any agricultural land is transferred by legal mode. It is not the duty of the purchaser who has to apply for mutation entry. He has further stated that revenue entries are meant for fiscal purpose only, it doesn't create any title in the property. Learned advocate for plaintiff has further submitted that registration of a sale deed is one kind of public notice and further transaction with respect to such property by any other person are void ab initio. Ld adv has submitted no other person can transfer such property in respect of which sale deed is lawfully registered and the same until not declared void by any competent court of law. Ld advocate for plaintiff has submitted that plaintiff in good faith failed to apply for

mutation entry after he purchased suit property in the year of 2000. Present defendants No- 2 and 3 have taken illegal benefit by fraudulently entering their names in revenue record and executed sale deed in favour of defendant No-1 without having any right, title, interest in suit property therefore such subsequent transfer does not create any right of defendant No-01 In suit property. Ld. advocate for plaintiff has submitted that Plaintiff is in possession of disputed property since year 2000 and also holding legal title of suit property hence plaintiff has prima facie case. Ld advocate has submitted that if defendants are not restrained as prayed then plaintiff has to suffer irreparable loss which cannot be compensated in terms of money. Plaintiff is the true owner of the suit property from the year 2000 and depending on the same for his livelihood. Ld.adv for plaintiff has stated that interference of honourable court is required otherwise defendants will illegally transfer or alienate suit property to another person which will lead to multiplicity of litigation and it will cause hardship to plaintiff. Ld adv has requested to allow the present application and to grant temporary injunction against present defendants.

5)Defendant has filed his written argument vide exhibit-21. Ld. advocate for the defendant has submitted as per the written argument. Ld. advocate for defendant has submitted that plaintiffs suit is not maintainable, plaintiff is not entitled to any relief claimed in his application.Ld advocate has submitted that defendant No- 2 and 3 have lawfully executed sale deed in favour of defendant No- 1. It has not been declared void till today by any competent court of law. Plaintiff has miserably failed to establish his Prima facie case hence requested to reject plaintiff's application. Ld. advocate has further stated that defendant No- 2 and 3 were having legal title of the suit property and therefore they have legally executed sale deed in favour of defendant No-1. Ld.advocate has further submitted that it is a settled principle that whoever comes before the court for relief of temporary injunction has to establish prima facie case , balance of convenience and factor of irreparable loss in his favour and in case on hand Plaintiff failed to established his primacy case therefore he is application should be rejected with cost.Advocate for defendant has requested to consider the document

produced by all the defendants and also requested to reject the application.

5) This is an application for temporary injunction and there are three basic principles for granting or refusing to grant temporary injunction that is Prima facie case in favour of the party seeking injunction, balance of convenience in favour of such person and last their must be irreparable loss which is likely to be cause to party if injunction is not granted to search person. Injunction being an equitable remedy is always based on sound Judicial principles and guided by rules of equity and the Peculiar facts and circumstances of the each case in addition to these three basic principles for granting or refusing to grant of injunction the conduct of the person seeking injunction should 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"

6)Considering the materials on record prima facie it appears that late Ghanchi Hasam Ismail Pirji had executed two different sale deeds with respect to suit property survey No- 1403/1. Said sale deeds are produced by the plaintiff at mark 3/1 and 3/4. Looking at the documents vide mark 3/1 that is registered sale deed No- 449 of 2000 **dated 16 June 2000** which is executed by late Ghanchi Hasam Ismail Pirji in favour of Noorbai Dawood Kalwat+5 others. Looking at the document produced by plaintiff at mark 3/3 which is also a registered sale deed No- 450 of 2000, executed by late Ghanchi Hasam Ismail Pirji in favour of Ghanchi Hajraabai Allahrakha Dhameriya. This was how survey number 1403/1 was disposed of by way of above mentioned registered sale deeds. Looking to both the documents it appears that disputed property that is survey No- 1403/1 admeasuring total 00-09 Gunta, half of the land was sold to Noorbai Kalwat+5 others and half of the land to Hajraaben Allahrakha Dhameriya. Further perusing the documents produced by plaintiff at mark 3/3 which is a registered sale deed executed by Noorbai Dawood kalvat+5 others in favour of Hasan

Mohammed Khadim present plaintiff. Looking to the document produced at mark 4/4 Which is a registered sale deed No-1034 of 2004 executed by Ghanchi Hajraben Allahrakha Dhameriya in favour of present plaintiff Hasan Mohammed Khadim. Looking to said document it appears that all the four sale deeds are registered one and it is not the case of defendants that all these sale deeds were declared void by any competent court till today. Plaintiff has submitted order of Deputy Collector Keshod of RRT Appeal case No- 77 of 2021 on perusing the same it appears that revenue entry No- 21910 by which name of defendant No- 2 and 3 were mutated in revenue record of disputed property has been removed from the mutation register. Hence arguments advanced by defendant No-2 & 3 that the revenue record of disputed property is at present in their names is not acceptable at this stage. It is also well settled that once a sale deed is registered and which is not declared void by competent court of law it is presumed to be in force. Merely not applying for mutation entry after execution of Sale deed does not disentitle such purchaser from the title of the property. Therefore arguments advanced by the plaintiff that he

has better title with regard to disputed property seems acceptable.

7)Further considering the documents produced by defendants No-2 and 3, it appears that disputed property survey No- 1403/1 was originally in the name of Ghanchi Allahrakha Dawood and by revenue entry No- 6452 said property was inherited to Ghanchi Saarbai dawood Gaddha.Later on vide revenue entry No- 7600 mark 17/5 Saarbai Dawood Gadhdha has transferred said property by way of gift to late Ghanchi Hasam Ismail Pirji in year 1993. Therefore it is clear that since 21st August 1993 that is certification of said revenue entry No- 7600 disputed land was in the name of late Ghanchi Hasam Ismail Pirji which was subsequently sold by way of two registered sale deeds to Noorbai Dawood kalvat+5 others and Ghanchi Hajraben Dhameriya. Further It appears that thereafter Noorbai kalvat +5 others Sold said property to present plaintiff and half of the land was sold by Ghanchi Hajraben Dhameriya to present plaintiff by way of registered sale deed produced date Mark 3/3 and 3/4. Hence from the documents submitted by both the

parties it appears that there were a total four register sale deeds executed long ago. Last registered sale deed mark 4/6 is executed by defendant No- 2 and 3 in favour of defendant No- 1 just before filing the suit. Looking to the documents and pleadings it appears that none of the sale deed is declared void by any court of law. Therefore contention raised by plaintiff that they have purchase disputed land almost 15 to 20 year ago and sale deeds executed thereafter i.e executed by defendant No-2 &3 in favour of defendant No-1 mark-4/6, does not pass any title or gives any right to defendant no-2&3 to transfer said property to any other person and purchaser by such sale deed does not receive better title than present plaintiff seems acceptable.

Hence the argument advanced by plaintiff that if temporary injunction is not granted then there will be further transfer which will result in multiplicity of litigation and plaintiff has to suffer hardship appears to be reasonable. Further considering the plaintiffs argument with respect to interference in possession of the suit properties is concern plaintiff has not preferred to apply local investigation of the suit property by court commissioner and further there is nothing to show that

at present plaintiff is in possession of the suit property from the date of execution of sale deed vide mark 3/3 and 3/4. Therefore possession over any property cannot be presumed relaying only upon pleading of the party. As far as presumption of possession with regard to registered sale deed is concerned looking at the facts and circumstances of the case in hand, it cannot be presumed at this stage of hearing of application for temporary injunction because as discussed earlier there is existence of more than one registered sale. Further it is to be noted that plaintiff has produced nothing on record to show that the plaintiff is in possession of suit property. Hence considering all the material and arguments advanced by all the parties I am of the view that plaintiff has succeeded to establish his prima facie case with regard to his arguments of alienation or transfer of suit property by present defendants.

(8) Further I am also of the view that plaintiff argument with regard to restraining the defendant from transferring properties also appears to be acceptable because if such relief is not granted then there are chances of transferring the suit property and same will result in multiplicity of litigation which will cause

unnecessary hardship to the plaintiff, and allowing present application will not going to cause any hardship to present defendants.

(9) I am also of the view that the balance of convenience also appears to be in favour of the plaintiff with respect to relief of temporary injunction restraining defendants from transferring suit property. Looking at the record and submissions made by all the parties, if a temporary injunction is granted with respect to further transfer or alienation of suit property in any mode against defendants it will not going to cause any hardship to present defendants.

Hence considering all the material on record submissions by all the parties and for the above discussed reasons I am of the view that plaintiff has established his prima facie case and other two factors that are balance of convenience and irreparable loss are also in favour of plaintiff. If defendants are not resistant from transferring the suit property till final disposal of the suit it will cause grave injustice to the present plaintiff. Hence in the interest of Justice I the undersigned Pass following order.

: Order :

-Present application filed by plaintiff is partly allowed.

-All the defendants are hereby directed not to transfer the suit property i.e. revenue survey No-1403/1 in any manner or any mode of transfer till final disposal of the suit or further order.

Pronounce today on this 23rd day of February 2023 in open court

Date:23/02/2023

Place: Mangrol.

Changiz Maswar Rathod
Principal civil Judge Mangrol.
GJ 01238