

ORDER BELOW EXH. 5.

1. The short facts of the present application is that the plaintiff has filed suit against the defendant for specific performance of contract. It has been stated by the plaintiff that suit property mentioned in the Para-1 is belongs to the defendant No. 1. The defendant No. 1 is the owner of the suit property. He desired to sale suit property. Plaintiff has interested in the said property therefore, they are entered into the agreement on dated 06/03/2020. The said contract is produced by the plaintiff at Mark. 3/2. Defendant No. 1 agreed to sale his property to the plaintiff against the consideration of Rs. 55,00,000/- and plaintiff has paid Rs. 13,00,000/- to the defendant No. 1 as per the agreement and balance amount would be paid at the time of registration of sale deed after title clearance of the said property. The plaintiff has demanded several time from the defendant No. 1 to clear the title of said property. Plaintiff has issued legal notice for specific performance of contract to defendant No. 1. In his reply defendant No. 1 stated that his son Mr. Jayesh Jashbhai Patel has filed suit which is pending in the Civil Court. Therefore, the plaintiff has filed the present suit under Specific Relief Act for specific performance of contract. In which present application has been filed by the plaintiff for temporary injunction against the defendant and prayed that during the pendency of this suit, defendants are trying to sale, transfer, alienate of suit property therefore, he prays for the injunction against the defendant.

2. After filing of this suit, urgent notice issued to the defendant. During the pendency of the suit, the third party has filed application for joining as defendant at Exh. 15 which was

granted by my Ld. Predecessor Judge. The defendants filed their reply at Exh. 39 and deny the facts of the plaintiff. The defendant No. 1 specifically stated that the defendant No. 1 is not sole owner of the suit property. He has a right in suit property but this property was an ancestral property and without consent of other legal heirs, he cannot sell the property which is mentioned to the plaintiff at the time of execution of the agreement. Without consent of other legal heirs, he could not have right to sell suit property. The defendant No. 2 to 4 have filed their written statement at Exh. 39 and deny the facts of the plaintiff and specifically stated that defendant No. 2 has filed declaration suit against the plaintiff and defendant No. 1, which is pending in this court. The property mentioned in the plaint is ancestral property and without consent of the defendant Nos. 2 to 5, defendant No. 1 has no right to execute any agreement in favour of the plaintiff. The defendant No. 2 to 5 also have share in the suit property. Therefore, they prayed to reject the suit of the plaintiff.

3. Heard the Ld. Advocate for the plaintiff and defendants and perused the record and document produced by both the parties. It is not disputed that defendants are in possession of the suit property. The agreement produced by the plaintiff at Mark. 3/2 is agreement to sale of suit property. Reading of Mark. 3/2 it is found that agreement executed by the plaintiff and defendant No. 1 which is without possession of suit property. As per the agreement, defendant No. 1 has agreed to sell his property to the plaintiff. The plaintiff has paid Rs. 1,00,000/- through cheque on dated 20/01/2020. The plaintiff has produced Village Form No. 7 at Mark. 3/1 and looking to the same, the defendant No. 1's name mentioned

in the Village Form No. 7 and plaintiff has produced order of the Deputy Collector in which restriction under Sec. 43 of the Tenancy Act made by the Collector are lifted by this order. At Mark 3/3 to 3/4 plaintiff has produced receipts of money received by the plaintiff. Mark. 3/5 is Bank Statement of the plaintiff. Mark. 3/6 is legal notice issued by the plaintiff to the defendant No. 1 and Mark. 3/7 is reply given by the defendant No. 1.

4. The plaintiff's advocate has argued that the plaintiff has filed prima facie case against the defendants and the balance of convenience is in favour of the plaintiff. If injunction is not granted in favour of the plaintiff, the plaintiff has suffered ir-repairable loss due to act of the defendant which cannot compensate in terms of the money, therefore, he prayed for the injunction as per the application. The defendant's advocate has argued that the plaintiff has no prima facie case against the defendants. The plaintiff has not come with clean hands. The documents executed by the plaintiff and defendant No. 1 are suspicious and not applicable to the defendant Nos. 3 to 5. The suit property is an ancestral property and without consent of the other co-share holders, one cannot sale, transfer or executed any document in favour of any person. Therefore, they prayed to reject the application.

5. It is not disputed that the defendants are in possession of the suit property. The agreement to sale executed by the plaintiff and defendant No. 1. As per the agreement, consideration paid to the defendant No. 1. The defendant No. 2 to 5 claimed that they have share in the suit property. The defendant No. 1 has received Rs. 13,00,000/- from plaintiff. Looking to the Mark. 3/4 which is

receipt of defendant No. 1 in which he has mentioned that he has received Rs. 13,00,000/- for transfer land bearing Survey No. 3314, Nadiad Hirji Party from new tenure to old tenure. Looking to the document produced by the plaintiff, it is not disputed that defendants are in possession of the suit property. Defendant No. 2 has filed suits against the plaintiff which is pending in this Court. Defendant No. 1 has not denied the agreement to sale produced at Mark. 3/2. The plaintiff has proved that the agreement executed by the defendant No. 1 but here in this case, dispute between the parties is that the defendant No. 1 has right to make such document in favour of the plaintiff. As per the revenue record, in Form No. 7 and 12, it is shown that defendant No. 1 name is mentioned in the said Village Form. In this suit property, there was tenancy dispute pending before the Deputy Collector. This suit property belongs by the defendant No. 1 as a tenant. Tenancy dispute decided by the Deputy Collector and restriction made u/s. 43 of the Tenancy Act was lifted by the Collector. Therefore, plaintiff has made prima facie case against the defendant without entering into the evidence, he shows that defendant No. 1 has executed agreement to sale in favour of him. At the time of deciding temporary injunction application, plaintiff has to show that balance of convenience is in favour of the plaintiff. In support of this contention, plaintiff has produced receipt of money given by the defendant No. 1. Therefore, plaintiff has made prima facie case against the defendant and balance of convenience is in favour of the plaintiff. If temporary injunction is not granted in favour of the plaintiff, that plaintiff has to suffer irreparable loss which cannot be compensated in terms of money. Therefore, following order is passed in the interest of justice.

FINAL ORDER

1. The present application is hereby allowed.
2. The defendants and plaintiff are directed to maintain status quo qua suit property mentioned in Para-1 of the plaint.

Signed and pronounced in the open Court today i.e. on 25th day of the month of November – 2024

Nadiad
Date: 25/11/2024

G. D. Padia
Principal Senior Civil Judge,
Nadiad (Dist. Kheda)
GJ01072