

Order below Exh. 5

(1) Read, the interim application Exh.5 and plaint. Heard the Ld. Advocate for the plaintiff.

(2) The plaintiff has filed present suit for cancellation of sale deed and specific performance of oral agreement to sell of 1960-61 for the lands bearing survey No. 984/1 situated at Kapadwanj, Dist. Kheda. It is the case of the plaintiff that defendant No. 2 to 6 are legal heirs of Gulam Rasul Nanumiya and purchaser of suit property defendant No. 1 is third person. Having family relation, forefather of defendant No. 2 to 6 entered in oral contract in 1960-61 with the forefather of the plaintiff and hand over the suit property to the forefather of the plaintiff and name of the forefather of the plaintiff entered in the revenue record. The defendant No. 2 to 6 have entered their name in the revenue record after the death of Gulam Rasul Nanumiya. They are having in possession of the suit property since 1960-61 (65 years) and they cultivating it every year, they planted 50 to 60 Babool tree and from that they are taking fruits, flower and wood. The defendant No. 2 to 6 had executed registered sale deed No. 5857/2023 on 02/12/2023 in favour of defendant No. 1 as their names were on revenue record. Hence, the plaintiff has filed the present suit for cancellation of sale deed and for specific performance as well as permanent injunction to restrain defendant No. 1 for further allineation.

(3) After registering present suit, notice has been issued and duly served to the defendant Nos. 2 to 6 and they submitted their written statement vide Exh. 10, in which they contended that the suit land is new tenure land and their forefather cultivating from 1945-46 to 2004-05. Further stated that the defendant No. 2 to 6 and their forefather had never sold the suit land by oral agreement to the plaintiffs forefather. Thus, it is asked to dismiss the interim injunciton application with cost.

The defendant No. 1 submitted his written statement vide Exh. 8, in which they contended that defendant No. 2 to 6 have executed registered agreement to sell No. 4462/2023 on 28/08/2023 and paid premium of Rs. 4,54,978/- after order of Collector Kheda and then after defendant No. 2 to 6 have executed registered sale deed No. 5857/2023, Dt. 02/12/2023 in favour of him. Further he stated that he has filed land grabbing case and police case against the plaintiffs. Thus, it is asked to dismiss the interim injunction application with cost.

(4) The Ld. Advocate for the plaintiffs have submitted written argument vide Exh. 20 and argued that having family relation, forefather of defendant No. 2 to 6 entered in oral contract in 1960-61 with the forefather of the plaintiff and hand over the suit property to the forefather of the plaintiff. The defendant No. 2 to 6 have entered their name in the revenue record after the death of Gulam Rasul Nanumiya. They are having in possession of the suit property since 1960-61 (65 years) and they cultivating it every year. The defendant No. 2 to 6 had executed registered sale deed No. 5857/2023 on 02/12/2023 in favour of defendant No. 1 as their names were on revenue record. The plaintiffs have strong prima facie case and balance of convenience is in his favour and irreparable loss caused to the plaintiff if injunciton is not granted. Hence the plaintiffs are entitled to get relief as prayed for.

The Ld. Advocate for the defendants argued that defendant No. 2 to 6 have executed registered agreement to sell in favour of defendant No. 1. The defendant No. 1 has paid premium amount as per the order of Collector Kheda and defendant No. 1 has paid consideration to the defendant No. 2 to 6. Then after they have executed registered sale deed in favour of defendant No. 1. Therefore, no prima facie case is in favour of the plaintiff. Thus, the application of the plaintiffs is likely to be rejected with cost.

(5) The present application has been filed under Order 39 of C.P.C. for getting temporary injunction it is a equitable relief. The person who came in the court to get the relief have to come with clean hands and he has to show the court that if injunction is not granted it will harm to the plaintiff.

(5.1) In Shiv Kumar Chadha v. Municipal Corporation of Delhi 1993(3) SCC 161, a Bench of three Judges of this Court held that "a party is not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles-ex debito justitiae.

Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him. Further the court should be always willing to extend its hand to protect a citizen who is being wronged or is being deprived of a property without any authority in law or without following the procedure which are fundamental and vital in nature. But at the same time the judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the court."

(5.2) In Dalpat Kumar v. Prahlad Singh (AIR 1993 SC 276), a Bench of two Judges (in which K. Ramaswamy, J. was a Member) of this 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 court would be circumspect

before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused. The existence of prima facie right and infringement of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction.

(6) The plaintiffs have produced documentary evidence in support of their case. The plaintiffs have produced village form No. 7, village form No. 8-A, written statement of RCS No. 112/2006, village form No. 6, registered sale deed No. 5758/2023, copy and dismissal order of RCS No. 112/2006. Now looking to the documents it transpires that the defendant No. 1 became register owner of the suit property by virtue of registered sale deed No. 5857/2023, Dt. 02/12/2023 and his name is entered on the revenue record. The defendant No. 1 has paid premium of Rs. 4,54,978/- vide Collector order No. 2482/16/1/119/2023, Dt. 23/10/2023. The defendant No. 1 has submitted the copy of Collector's order and registered sale deed along with written statement.

(7) From the above discussion, it transpires that the defendant No. 1 had purchased the suit property after order of Collector Dt. 23/10/2023, he had paid premium and thereafter defendant No. 2 to 6 had executed registered sale deed No. 5857/2023, Dt. 02/12/2023 in favour of defendant No. 1 and his name is entered on the revenue record. Thus, plaintiffs have no prima facie case has been appeared to be seen of the plaintiffs and in such circumstances there is no need to see the balance of convenience and irreparable loss from the above discussion. There is no fit case to grant temporary injunction to the plaintiffs. Hence, I pass following order in the interest of Justice.

ORDER

1. The present interim injunction application of the plaintiffs is hereby rejected.
2. The cost of the present application will follow the final decision of the suit.

Sign and Pronounce in the open court today on 15th April in the year of 2026.

Place:- Kapadwanj

Date:- 15/04/2026

(M. R. Shukla)

Additional Senior Civil Judge

Kapadwanj

Code No. GJ00681