

**IN THE COURT OF (B.B. JADAV) PRINCIPAL SENIOR CIVIL JUDGE
AT KAPADWANJ**

**Spl. C.S. 86/2017
Old Case No. 199/2014**

Order Below Exh. 5

1. Plaintiff has filed present suit against the defendants for the specific performance, in lieu of, agreement to sale executed by defendant Nos. 1, 2 & 3 in favour of plaintiff on date 13.09.2010 in respect of suit land bearing Block Survey No. 259 ad-measuring H-1-50-74 Sq. mts. and Block Survey No. 260 ad-measuring H-0-32-37 Sq. mts. situated in the Sim of Village Mirzapur, Ta. Kathlal and also seeking interim injunction in respect of above stated suit property by preferring interim injunction application Exh. 5.
2. The notice/summons duly served upon the defendant and my learned predecessor has passed an order to proceed ex-parte against defendant Nos. 1 & 3 and 2 to 6 on date 06.01.2016 below Exh. 18 & 19 applications preferred by plaintiffs learned Advocate and proceeded further according to law later on plaintiff preferred an application vide Exh. 25 to join defendant Nos. 7 & 8 in present case on hand which is allowed and the newly defendant Nos. 7 & 8 filed

written statement vide Exh. 61 in which it is contended that the suit is filed by plaintiffs is false, frivolous and vexatious and not maintainable in eye of law and denied all the averments made in Exh. 1 and Exh. 5 application in toto. Further, it is contended that they are the bona fide purchaser disputed land for the valuable consideration and asked to dismiss the suit and Exh.5 application with cost. Further, it is pertinent to note that as the present suit transfer from Nadiad Senior Civil Court to this new establish this Court and the transfer notice issued to the defendant Nos. 1 to 6 through R.P.A.D. though they are not remains present and proceed with the matter. In the circumstances, this Court proceeded to further according to law.

3. Plaintiff has submitted following documentary evidence in support of present application.

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|---------------------|--------------------------------------|
| 1. Mark 3/1 | Copy of Village Form No. 7/12 |
| 2. Mark 3/2 | Copy of Village Form No. 7/12 |
| 3. Mark 3/3 | Copy of Village Form No. 8-A |
| 4. Mark 3/4 & 3/5 | Copies of Village Form No. 7 |
| 5. Mark 3/6 | Copy of Banachitthi dated 13.09.2010 |
| 6. Mark 3/7 | Copy of R.P.A.D. Notice |
| 7. Mark 3/8 to 3/10 | Copies of R.P.A.D. Acknowledgement |

Slips

8. Mark 3/11 & 3/12 Copies of Public Notices
 9. Mark 3/13 Copy of R.P.A.D. Notice
 10. Mark 3/14 Copy of Agreement to Sale
 11. Mark 3/15 Copy of Property Valuation Statement
 12. Mark 26/1 to 26/4 Copies of Village Form No. 7/12
 13. Mark 26/5 Copy of Registered Sale Deed No.
463/2005
 14. Mark 26/6 Copy of Registered Sale Deed No.
1197/2015
 15. Mark 24/1 & 24/2 Copies of Village Form No. 7/12
 16. Mark 24/3 Copy of Village Form No. 8-A
 17. Mark 24/4 Copy of Village Form No.6
 18. Mark 63/1 Copy of Registered Sale Deed No.
1085/2017
 19. Mark 63/2 Copy of Objection Application
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4. Defendants have not furnished any documentary evidence in support of their defense.
 5. The following points arise for my determination of Exh. 5 application.
 1. Whether the plaintiff has any prima-facie case ?

2. Whether the balance of convenience is in favour of the plaintiff?
 3. Whether the plaintiff will suffer irreparable loss/ injury, if injunction is not granted ?
 4. What order ?
6. My findings to the above points are as follows.
1. In the Negative
 2. In the Negative
 3. In the Negative
 4. As per final order

: REASONS :

7. The learned Advocate for the plaintiff has argued that disputed property originally belongs to defendant Nos. 1 to 4 and they are entered into agreement to sale with plaintiff and executed banachitthi in favour of plaintiff. Further, it is argued that defendant Nos. 1 to 4 have not complied with the terms and conditions of the alleged banachitthi and executed registered sale deed in favour of defendant Nos. 5 & 6 in existence of alleged agreement to sale dated 13.09.2010. Further, it is argued that plaintiff is ready and willing to

perform his part of agreement to sale and for that plaintiff has issued legal notice to the defendants which is duly served upon them though they have not complied with the notice. Further, it is argued that plaintiff has also registered the pendency of present suit as per Section-52 of the T.P. Act. Thus, the registered sale deed executed in favour of defendant Nos. 7 & 8 are defeated on this ground. Further, it is argued that looking to the revenue records defendant Nos. 1 to 4 have right, title, interest to execute alleged agreement to sale in favour of plaintiff and they are bound to comply with the terms and conditions of the same. Further, it argued that plaintiff has successfully established his prima facie case also prove balance of convenience and if injunction is not granted then plaintiff suffer irreparable loss which is not compensated in terms of money. Hence, it is asked to allow the Exh. 5 application.

8. Against this, the learned Advocate for the defendant Nos. 7 & 8 has argued that looking to the prayer of Exh.1 and Exh. 5 are quite similar and identical which is allowed at this stage then entire suit is disposed of and this kind of prayer at the interim stage never be allowed. Further, it is argued that the defendant Nos. 7 & 8 have disposed of disputed property and the new party is not joined in present case on

hand. Further, it is argued that the alleged agreement to sale is not signed by defendant No.4 and looking to the averments of alleged agreement to sale produced at Mark-3/6 is created doubt and there are several correction carried out in it and the writing also changed frequently in many paragraphs of this agreement to sale. Further, it is argued that the said agreement to sale prima facie created doubt on its genuineness and on the basis of it plaintiff is not entitled to get relief as prayed for. Further, it is argued that looking to the agreement to sale which is unregistered and also created doubt that being a land broker how plaintiff can executed such a agreement to sale for the amount of crores of rupees which created doubts. Further, it is argued that plaintiff has not furnished any evidence to prove readiness and willingness and also not proved any receipt in respect of Rs. 2,00,000/- (Two Lakhs) paid to the defendant Nos. 1 to 4. Further, it is argued that in absent of signature of defendant No.4 on the alleged agreement to sale it cannot be said a complete executable contract as per the Provisions of Contract Act. Thus, it is asked to reject the Exh.5 application.

9. Now, on perusing the pleadings and evidence furnished by plaintiff first of all plaintiff put reliance on the banachitthi (Agreement to Sale)

furnished vide Exh. 3/6 on perusing it, it is in written banachitthi written on plaint writing paper and name of sellers mention are Phulabhai Damodardas, Natvarlal Damodardas, Ratilal Damodardas, Kailashben Damodardas who are the defendant Nos. 1 to 4 in present case on hand. Further, the name of purchaser shown as Kathiriya Dineshbhai Bachchubhai which is the plaintiff in present case on hand. On perusing this banachitthi which is executed in respect of land bearing survey Nos. 260 & 259 situated in the Sim of Village Mirzapur, Ta. Kathlal and the amount of consideration decided Rs. 22,00,000/- (Twenty Two lakhs) per vigha but the total consideration amount is not mention in it but on perusing the plaint, it transpires that the total amount of consideration is about 1,68,17,684/- (One Crore Sixty Eight Lakh Seventeen Thousand Six Hundred Eighty Four). Thus, it transpires that the banachitthi is for the huge amount of consideration though it is executed in so casual manner in which a person having common sense never be involve in it because in present scenario everybody wants to secure each and every transaction in every terms. Thus, the conduct of plaintiff who involve in present transaction for crores of rupees and prepared banachitthi in such a casual manner creates doubt because it is an unregistered

when crores of rupees involves in the transaction then a person obviously secure his transaction by registering the document but plaintiff don't explain the circumstances why he has executed such a banachitthi in casual manner.

10. Further, on perusing this banachitthi some writings also alter and edited later on and on perusing it Kailashben Damodardas has not signed said banachitthi. Thus, the said banachitthi is prima facie found to be without consent of Kailashben Damodardas when she is having right, title, interest in the disputed properties though her signature not obtained on it. In the circumstances, it cannot be said prima facie that present banachitthi is enforceable as per law and fulfill all the Provisions of Contract Act. Further, on perusing this banachitthi it is not clarified on the part of plaintiff that Kailashben Damodardas has given authority to other sellers and with that authority other sellers have executed it in favour of plaintiff. Further, on perusing this banachitthi it prima facie creates doubt on the writing but at this juncture it is obvious for this Court to not entered into the merits but it is the duty of the plaintiff to prove his prima facie case and also proved balance of convenience and irreparable loss for seeking interim relief as prayed for but in present case on hand, plaintiff is

failed to establish all the ingredients of interim injunction which are very important while deciding Exh. 5 application. Further, plaintiff has not furnished any documentary evidence to show that he has paid the amount of Rs. 1,00,000/- (One Lakh) to the Natvarlal Damodardas in cash and Phulabhai Damodardas, Ratilal Damodardas, because no receipts were furnished by plaintiff in this regard. Further, on perusing the entire banachitthi, it is prima facie established that the said banachitthi was executed by only Phulabhai Damodardas, Natvarlal Damodardas, Ratilal Damodardas and they alone have no right, title, interest to execute any banachitthi in respect of share and right, title, interest of Kailashben Damodardas because she has not given any consent or any authority for the same.

11. Further, on perusing the pleadings of plaintiff it transpires that plaintiff is an educated person and involved in the business of a land broker. In the circumstances, prima facie it is presumed that plaintiff is very well aware about all kinds of transactions in respect of land purchase and sale though he has acted in such a casual manner which is not expected from him because as discussed earlier above a common sense said that a person cannot involve without secure and guaranteed his money in any kind of transaction. Further, on perusing the pleadings of

plaintiff it transpire that the possession is lies with defendant Nos. 7 & 8 and lastly as per the argument advance on behalf of defendant Nos. 7 & 8 the possession lies with third person whom, defendant Nos. 7 & 8 have sold the disputed property. In the circumstances, the possession of plaintiff also not proved in present case on hand. Further, looking to the prayer of Exh.1 & Exh. 5 are quite similar identical and at this stage, if the interim injunction allow in favour of plaintiff then entire suit is going to be decided finally and the final prayer at interim stage never allowed.

12. Further, looking to the revenue records furnished at Mark-3/1 to 3/5, there is no any kind of lien obtained by original landlord over the disputed properties or it is not restricted land. Thus, prima facie it presume that the title of present disputed property was clear at the time of alleged banachitthi executed on date 13.09.2010 though it is mention in the banachitthi that when the title certificate came then after within 5 to 10 days, 33 per cent of total amount is required to be paid by plaintiff and after 4 months of it remaining 33 per cent is required to be paid and then after 4 months remaining entire amount is required to be paid by plaintiff and then after original landlord has to handed over possession to the plaintiff. But, looking to the Registered

A.D. Notice issued by plaintiff to the defendant Nos. 1 to 4 on date 07.11.2014 which is produced at Mark-3/7 in which in Para-3 at Page-3, it is stated by plaintiff himself that landlords have given all the title documents to the plaintiff then after, he has physically visited the land at spot and then decided to purchase the disputed land. Thus, on perusing this legal notice it is prima facie established that at the time of executing said banachitthi, plaintiff is having knowledge that the title of said disputed land is clear and then after he agreed to purchase the land. In the circumstances, there is no need to obtain title clear certificate. Further, for the sake of argument if, it is required to obtain the title clear certificate in respect of disputed property and the time for the same is decided about 4 months as per the alleged banachitthi of Mark-3/6 then why plaintiff kept himself for long long time and it is up to date 07.11.2014 when plaintiff has issued notice to the original landlord of Mark-3/7 which shows that plaintiff is failed to prove his readiness and willingness in respect of alleged banachitthi.

13. Further, as per the Provisions of Section 16(C) of the Specific Relief Act. Plaintiff has to prove his readiness and willingness towards the agreement to sale but in present case on hand, plaintiff is failed to do so because plaintiff has not furnished any evidence to show that he is

ready and willing to perform his part, in lieu of, alleged banachitthi. On the contrary, whatever evidence furnished by plaintiff prima facie it creates doubt on the conduct of plaintiff. Thus, plaintiff cannot prove his prima facie case on the basis of alleged banachitthi. Further, on perusing the said legal notice of Mark-3/7, it established that plaintiff has not paid any consideration amount to the landlord Kailashben Damodardas when she was having right, title, interest in the disputed property though she was unpaid the consideration amount and her consent also not obtained at that time of executing alleged banachitthi.

14. Further, plaintiff put reliance on the authority of (2009) 2 SCC 582 Supreme Court, Alka Bose Vs. Parmatma and Others. On perusing, this authority the facts and circumstances of the said authority are quite different from the present case on hand with due respect this authority is not helpful to the plaintiff in present case on hand as discussed earlier above in present case on hand, the alleged banachitthi defeated with the Provisions of Section-10 of the Contract Act as it is executed without consent and authority of landlord Kailashben Damodardas. In the circumstances, this authority is not helpful to the plaintiff in present case on hand. Further, on perusing

the entire evidence plaintiff is failed to establish his prima facie case also failed to establish balance of convenience and also failed to establish irreparable loss. Hence, I reply issue Nos. 1 to 3 in the "Negative" and pass the following final order in the interest of justice.

:: ORDER ::

Presents Exh. 5 application preferred by the plaintiff is hereby rejected.

Cost of this application shall be decided at the final decision of the suit .

Signed and Pronounced in the open Court, today this 29th day of October, 2018.

**Place: Kapadwanj.
Date: 29 /10 /2018
Ritesh**

**(Bharat Bhaskarbhai Jadav)
Principal Senior Civil Judge,
Kapadwanj
Judge Code No. GJ00714**