

**IN THE COURT OF 3rd ADDL. SENIOR CIVIL JUDGE-
& ACJM-BHUJ, DIST. KACHCHH -GUJARAT**

SPCS NO: 22/2020

Ld. Advocate for the Plaintiffs: Shri M.A. Saiyed

Ld. Advocate for the Defendants: Shri A. J. Thacker & S.S. Chaki

ORDER BELOW EXHIBIT. 5

1. Heard the LAs of parties. Read the contents of the plaint, written-statements and the application made for interim injunction. Perused the documents filed along with the pleadings. Gone through the arguments advanced by both the parties. Gone through written-arguments submitted by the defendants vide Ex.14. Pleadings and arguments being part of the record are not reiterated to avoid repetition.
2. Plaintiff have filed the present suit against the defendants seeking a declaration that they and defendant no. 1 possesses joint ownership right in the property bearing plot no.3 (for the Institute purpose) admeasuring 1288.08 Sq meter, situated in revenue survey number 118/P/3, identified as Maruti Nagar, at Bhuj-Kachchh (hereinafter referred to as the "*disputed property*"). Simultaneously, the plaintiff sought the cancellation of sale deed no. 6131 and 6132 dated 31/07/2017 made in respect of disputed property, alleging that the same is made by the defendants committing breach of trust, cheating

and illegally misusing power of attorney. Simultaneously, the plaintiff had also sought the permanent injunction against the defendants so as to prevent the property from further sale and/or transfer.

3. Herein through the application made at Exhibit 5, the plaintiff has sought an interim injunction against the defendants so as to prevent the disputed property from further sale, alienation and transfer till the final suit is adjudicated.
4. As per say of the plaintiffs, plaintiffs had jointly purchased a disputed property described in paragraph 3 of the plaint along with the defendant no. 1 on 22/08/2007, and paid the consideration amount therein. Thereafter, plaintiffs, on recommendation of defendant no.1 and in order to avoid further inconvenience in administration of the disputed property, had made a power of attorney in favour of defendant no.4. However subsequently, the rights conferred under said power of attorney is misused by the defendant no. 4 as he had transferred 67% of the share in the property in the name of defendant number 2 and 3 by making two registered deeds dated 31/07/2017. The said act of transfer of share in the property by defendant no.4 was performed without obtaining any permission and consent of the plaintiffs. Also, no consideration amount is been transferred or paid to the plaintiffs in this regard.
5. As per say of the plaintiff, transfer of 67% of the share in the name of defendant no. 2 and 3 by defendant no. 4 and, non-payment of the consideration amount to the

plaintiff arisen out of this transaction, was nothing but a fraud, criminal breach of trust and cheating, and the same was done with a view to the curtail rights of the plaintiffs in the property. Knowing this, the plaintiff had also forwarded a police complaint and finally they approached the court by filing this suit.

6. The urgent show-cause notice of interim injunction application vide Ex. 5 is duly served to the defendants and, they have appeared through their ld. Advocate and filed their written statement/reply at Ex. 10 and 11 respectively. Through these written-statements, the defendants have denied and refuted the contents of plaint in toto. The defendants said that court litigation/proceeding regarding disputed property was pending when it was purchased, and few persons had encroached upon the property by taking advantage of the situation prevailing at the time of earthquake. The removal of such encroachment requires good amount of expenses. The same has been discussed with the plaintiffs, and plaintiffs agreed to leave their share by taking cost, and in return, plaintiff had made a detailed power of attorney in the name of defendant no.4. Thereafter, defendant no.4 had removed encroachment, and a good amount in this regard is paid by defendant no. 2 and 3. All this procedure is carried out by obtaining a power of attorney of defendant number 1 to the plaintiff. It is stated that all the transactions were made in the presence of plaintiffs and was brought to the knowledge of plaintiffs. It is further stated that all the payments were paid to the plaintiff through their power of attorney holder, and receipts on the same has been

acknowledged by defendant number no. 4.

7. It is further submitted that all the transaction pertaining to disputed property, and its development as a party plot was in the knowledge of the plaintiff. The plaintiff themselves remained present in various family functions of the defendant's wherein the function was organised at same disputed property i.e. party plot. The defendants finally prayed that the plaintiff suit as well as interim injunction application shall be rejected with cost.

8. From the above pleadings of the parties following points arise for my determination of Ex. 5 applications.

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?

9. My findings to the above points are as follows.

1. In the Affirmative
2. In the Affirmative
3. In the Affirmative
4. As per the final order

10. The documentary evidences produced by the parties along with the pleading were not mentioned in detail herein but the same were discussed in the course of reasoning

where-ever found relevant.

11. The Id. advocate for the plaintiff as well as the defendant had argued the matter at length. The arguments of both the side being part of the record are not reiterated herein and the same are acknowledged in detail while dealing with the issues framed above.

: R E A S O N S :

12. **POINT NO. 1 TO 3:-** All these issues are interconnected with each other and therefore for the sake of convenience and to avoid repetition, I discuss all these issues together.

13. It is undisputed that the property in question was purchased jointly by the plaintiffs and defendant no.1 in the year 2007 through a registered sale deed, and accordingly consideration amount is also paid jointly.

14. It is also undisputed that plaintiffs and defendant no.1 had made a joint notarised power of attorney in favour of defendant no.4 to administer the transaction in respect of the disputed property. It is also undisputed that alleged power of attorney is made with the free consent of the parties, and parties were having good terms with each other, till the disputed property is sold/transferred through the sale deeds dated 31/07/2017.

15. Now, the question arises herein is that whether the power of attorney holder had acted in good faith and

represented the interest of plaintiffs vested in the disputed property? To answer this, the following observation is made by the court.

16. A power of attorney holder is a person who is authorized by donor legally. An attorney must not exceed the authority given under the power of attorney. If the attorney does exceed their authority, he or she may be liable for any damages suffered by the donor or others. The attorney may, however, do all those acts which are authorized, but only by a particular method, if the power of attorney so indicates. If there is a breach of any condition by the attorney then he shall be liable to the donor except in a case where he has acted reasonably.

17. Undoubtedly, in the present case there was no pre-condition in the power of attorney that holder would obtain the prior consent of donor (parties) before entering into a transaction with respect to disputed property. But even then, as a matter of course, it is expected that the power of attorney holder would act in good faith and would keep the donor informed about the transaction that he conducts in respect of property. It is also expected from the holder that he will transfer the proceeds/benefits/gains obtained from the transaction of the property to the donor. However, in the instant case the holder i.e. defendant no. 4 did neither informed the plaintiff nor transferred the gains/benefit obtained on account of sale of the property. The defendant herein did not produced any evidence which could justify his claim that plaintiff is adequately

compensated while releasing his right in respect of the disputed property. The defendant also did not produce any evidence which could justify that he has acted in good faith while selling the property to defendant no. 2 and 3.

18. The plaintiffs herein had produced ample evidence which substantiates that they jointly possess rights in the disputed property. They also produced ample evidences to justify that their rights have been violated/infringed by not keeping them informed about the transaction in respect of disputed property, and not transferring the proceeds/gains obtained from the transaction of the disputed property. In such circumstances, the court believes that plaintiff has a prima-facie case in their favour.

19. At this stage the court needs to ascertain the prima facie case findings, which are indicative from the documents itself. The other object of the interim injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

20. The plaintiff also successfully brought on record that the defendants jointly are in hold of and in possession of the property, and they are the one who were enjoying the proceeds/benefits of the property without giving anything to the plaintiff. Letting this situation to be continued, would not only cause irreparable loss to the plaintiff but would also defeat the plaintiff's right vested in the

property. The situation arisen herein sufficiently suggests that the plaintiff would suffer an irreparable loss if the interim application has not been decided in his favour.

21. On the valuation of the document submitted on record and the argument made above. It is clear that plaintiff has prima-facie case in his favour. On the other hand defendant has failed to project sufficient the grounds for refusal of application. Thus, the balance of convenience lies in the favour of plaintiff. Also, if the defendant is not enjoined from the act of sale, alienation and/or transfer of the disputed property, it would lead to irreparable loss to the plaintiff.

22. The court is of the firm belief that property in dispute needs to be preserved till the final dispute is adjudicated and, the same could not be done if the disputed keeps on transferring to the one and another parties. Hence, in these circumstances, I reply point No. 1 to 3 in the affirmative.

23. **POINT NO. 4** :- In view of the above discussion, I pass following order in the interest of justice;

: O R D E R :

- Application Ex. 5 preferred by the plaintiff is hereby accepted.
- Defendants are directed not to sale, transfer, alienate, and/or mortgage the disputed property directly or indirectly till the conclusion of suit.

- Defendants are directed not to transfer and/or alienate the possession the disputed property directly or indirectly till the conclusion of suit.
- No order as to cost.
- The copy of order be sent to the ld. Advocates of the parties through Email.

Date: 07/10/2020

Places: Bhuj-Kachchh

Sd/-

Anshul Kumar Kaushik

3rd Add. Sr. Civil Judge & ACJM

Bhuj-Kachchh

(UIC: GJ01091)