

Order below Exhibit-5

(1) This is an application filed by the Plaintiff under Order-39 Rule-1 & 2 read with Section-151 of the Code of Civil Procedure, 1908 for seeking temporary injunction restraining defendants from selling, transferring or creating any charge etc. in respect of the suit property until final disposal of this suit.

(2) The notice was issued by the Court and it was duly served to the defendants. The defendant no. 1 to 3 filed their reply at Ex. 22 and defendant no. 8 filed his reply at Ex. 30. Defendant no. 4 to 7 did not remain present despite service of notice, therefore, my Ld. predecessor passed an order to proceed ex-parte qua defendant no. 4 to 7.

(3) The brief facts of the present application are that:

That the defendant no. 4 to 7 assigned the plaintiff and defendant no. 8 the task to get the title cleared in respect of the agricultural land bearing no. 445/2 Hector 2.96.43 Are (hereinafter referred as suit property for the sake of convenience). The defendant no. 4 to 7 executed an agreement in favour of plaintiff and defendant no. 8 and the defendant no. 4 to 7 failed to perform as per the above said agreement and sold out the suit property in favour of defendant no. 1 to 3 and violated the terms of the above said agreement. The agreement was executed by defendant no. 4 in respect of suit property along with other properties and it was

agreed upon that plaintiff and defendant no. 8 will carry out the process of title clearance and the expenses would be borne by the plaintiff and defendant no. 8. It was also agreed that the expenses would be adjusted when the property would be sold out. It was agreed upon that when the property would be sold out, the sale consideration would be shared as half share of the plaintiff and the defendant no. 8 and the rest of the half of the defendant no. 4. The predecessor of the defendant no. 4 to 7 executed a power of attorney in favour of the son of the plaintiff to carry out the necessary procedure to do needful in respect of revenue records, which was done accordingly and consequently the name of defendant no. 4 to 7 was entered in the revenue record. But the defendant no. 4 to 7 in collusion of defendant no. 8 sold the suit property to the defendant no. 1 to 3 without consent or knowledge of the plaintiff. Further, the defendant no. 4 to 8 forged a receipt of receiving money by pasting the photograph of the plaintiff and by doing a false signature of the plaintiff. The plaintiff has prima facie case, as the defendant no 4 to 8 have violated the terms of above said agreement and forged the above said receipt. Further, the balance of convenience is in his favour.

The irreparable loss and injury will be caused to the plaintiff if the present application is not allowed.

The plaintiff has filed documents from 3/1 to 3/23 in support of his contentions.

(4) The defendant no. 1 to 3 filed their written statement and reply at Ex. 22, wherein they denied the contentions of the plaintiff in toto and specifically submitted as below:

That defendant no. 1 to 3 are bonafide purchasers and they have purchased the suit property after paying the consideration amount. The predecessor of the defendant no. 4 to 7 expired on 27.08.2015, then how the son of the plaintiff can act upon the power of attorney of a dead person. Further, the so called agreement seems to be executed on 23.02.2021 as alleged by the plaintiff. On 19.02.2021, the public notice was published in Kachchh Mitra and it was replied on 20.02.2021. The mamlatdar Shri Mandvi passed the order of converting the suit land in old tenure land from new tenure land on 22/01/2022. The defendant no. 4 to 7 are illiterate persons and the plaintiff has taken disadvantage of this fact and forged the so-called agreement. In the so called agreement, there are other properties included but the plaintiff has not taken any objection except the suit property.

Further, in the so called agreement there is signature of only one person i.e. defendant no.4. There is no signature of defendant no. 5 to 7. The plaintiff has not produced any calculation in respect to expenses incurred by him because he has not done any expenses. The plaintiff has not impleaded the necessary parties. Hence, the present application is liable to be rejected with costs.

They produced the documents from Mark 23/1 to 23/19 in support of their contentions.

- (5) The defendant no. 8 filed his written statement and reply at Ex. 30, wherein he denied the contentions of the plaintiff in toto and supported the contentions of defendant no. 1 to 3 which are not repeated herein for the sake of brevity.
- (6) Heard the Ld. Adv. for the plaintiff. He has argued as per application for temporary injunction, the facts of which are not repeated herein for the sake of brevity.
- (7) Heard the Ld. Advocates for the defendant no. 1 to 3 and 8. They led their arguments as per their reply, the facts of which are not repeated herein for the sake of brevity.
- (8) This is an application for temporary injunction and there are three basic principles for granting or refusing to grant temporary injunction i.e. prima facie case in favour of the party seeking injunction, balance of convenience in favour of such person and last there must be a irreparable loss which are likely

to be caused to party if injunction is not granted to such person. And an injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. Apart from three basic principles, the court is also required to see the conduct of parties seeking equitable relief of temporary injunction.

(9) Looking at the materials on record, the plaintiff mainly relies upon the agreement dated 23.02.2021 which is produced at Mark 3/1, after perusal of it appears that only defendant no. 4 is the party to this agreement. However, the factum of ownership of defendant no. 4 to 7 has been stated by the plaintiff in the plaint itself. So, the defendant no. 4 alone can not be said to be the absolute and exclusive owner of the suit property. So, he alone could not have the right to execute the agreement in respect of suit property.

(10) So considering the law laid down by the Hon'ble High Court of Gujarat in **“Adani Export Ltd. Vs. Hindustan Organic”** reported in **2000 (3) GLR page no-2759** case regarding established of prima facie case, it has been held in para-31 and 32 of its pronouncement that it is well settled principles of law that the rule that before the issue of a temporary injunction, the Court must satisfy itself that the plaintiff has a prima facie case, does not mean that the Court should examine the merits of the case closely and come to a conclusion that the plaintiff has a case in which he is likely to succeed. This would amount

to prejudging the case on its merits. All that the Court has to see is that on the face of it the person applying for an injunction has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. (Para 31). In order to make out a prima facie case, necessary for granting an interlocutory injunction, the plaintiff need not establish his title. It is enough if he can show that he has a fair question to raise as to the existence of right which he alleged and can satisfy the Court that the property in dispute should be preserved in its present actual condition until such question is disposed of. The Court must also, before disturbing any man's legal right stripping him off any of the rights with which law has clothed him, be satisfied that the probability is in favour of his case ultimately failing in the final issue of the suit (Para 32). It is also a well settled principles of law that what the Court has to determine in granting injunction is whether there is a bona fide contest between the parties and when there is a fair and substantial question to be decided as to the rights of the parties in the suit, it is not necessary for the purpose or is it right that the Court should further examine the question in dispute or anticipate the decision of the question in the suit itself. (Para 32.1).

- (11) So in view of the aforesaid reasons, it transpires to this court that the plaintiff has not established prima facie case in this case and the balance of convenience is also not in his favour as the defendant no. 1 to 3 have purchased the suit property vide registered sale deed. It does not seem that irreparable loss

or injury would be caused if injunction application is not allowed. So in view of the aforesaid reasons, this court declines to grant an application for temporary injunction filed by the plaintiff. Under such circumstances, I hereby pass the following order in the interest of justice.

ORDER

- The application for temporary injunction is hereby dismissed (rejected).
- Cost shall be the cost in the cause of the suit.

Pronounced today in open court on 11th January, 2024.

Date: 11/01/2024

Place: Mandvi, Kachchh

(Swati Rajbir)
Addl. Civil Judge
Mandvi, Kachchh.