

**Order Below Exhibit 5**  
**In**  
**Regular Civil Suit No. 38 of 2021**

[1] Present application has been preferred by the plaintiff under Order 39 Rule-1,2 read with Section-151 of Civil Procedure Code and prayed for temporary injunction to restrain the defendants, from selling the suit property and from dispossessing plaintiff from the suit property as describe in para-1 of the plaint till final disposal of the suit.

[2] The notice of this application was issued to the defendants and it was duly served upon them. The defendants have appeared before this Court through power of attorney along with their Advocate and submitted reply vide Exh-14. The plaintiff has submitted rejoinder to it vide Exh.17. Further, the plaintiff has produced list of documents vide Exh-3.

[3] Ld. Advocate for the plaintiff has submitted written arguments vide Exh-22, wherein he has stated that the plaintiff has filed present suit for declaration. It is further submitted that the suit property was purchased by father of plaintiff Lt.Panchbha Hajaji Jadeja on 7/8/1962 vide registered sale deed no.583, the copy of sale deed produced vide Mark-3/1. It is further submitted that the suit property was in ownership and possession of plaintiff's father and he was cultivating it since 1962 and after demise of his father plaintiff is having possession over suit property and he is cultivating it. It is further submitted that father of plaintiff has not entered his name in revenue record of the suit suit property due to illiteracy. The defendants have tried to entered their name in suit property as legal heirs of Lt.Dungarshi Shivji Shah vide mutation entry no.3605, 3948, 4203, which were rejected. It is further submitted that defendants have entered their name by suppressing facts vide mutation entry no.4174 and defendant no. 2

to 4 have relinquished their right vide mutation entry no.4749 It is further submitted that those entries were challenged by plaintiff, wherein plaintiff can seek relief regarding sale deed from the Court that order was passed, so plaintiff has filed present suit. The copy of revenue record, mutation entry and order of Collector are produced vide Mark-3/2 to 3/16. It is further submitted that the suit property belongs to plaintiff only and defendants have no any right in suit property based on revenue entry. It is further submitted that the plaintiff is having prima facie case, balance of convenience is also in his favour and he will suffer irreparable loss if temporary injunction would not be granted in his favor. Therefore, it is required to grant the present application.

[4] Ld. Advocate for the defendant has submitted written argument vide Exh-23, wherein he has stated that alleged sale deed produced by plaintiff is not legal and plaintiff is not able to show his father was Panchubha Hajaji Jadeja. It is further submitted that plaintiff has not stated when or how long ago his father died. It is further submitted that plaintiff has not joined all legal heirs of Panchubha Hajaji Jadeja. It is further submitted that defendants have legally entered their name in revenue record of the suit property. It is further submitted that appeal and revision filed by plaintiff against mutation entry in favour of defendants are rejected by Deputy Collector and Collector. So, it is submitted that plaintiff is not having prima facie case, balance of convenience is also not in his favour and he will not suffer any irreparable loss in absence of temporary injunction. Therefore, it is requested to reject this present application.

[5] Heard Ld. Advocate for the parties, perused the present application, reply of defendant side along with record of the case. It is well settled principle of law that at the time of adjudicating an application for

temporary injunction, the court must be satisfied about the three basic principles for granting or refusing temporary injunction i.e.

- Whether the plaintiff has a prima facie case in his favour?
- Whether the plaintiff would suffer irreparable injury if his prayer for temporary injunction is not granted?
- Whether the balance of convenience is in favor of the plaintiff?

Further, an injunction being an equitable remedy, it 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 factors, the court is also required to see the conduct of party seeking equitable relief of temporary injunction. In addition to this three basic principles for granting or refusing to grant injunction, the conduct of the person seeking injunction should also be taken in to consideration because the granting of injunction is an equitable relief and is drastic or serious order.

[6] Looking to the record of the case, It transpires that the plaintiff is claiming his right over the suit property as legal heir of Panchubha Hajaji Jadeja, but plaintiff has not produced his pedigree or any other document of his succession. It further transpires that plaintiff has not produced death certificate of his father. However, plaintiff is claiming ownership and possession over suit property based on sale deed produced at Mark-3/1. By perusing it, it transpires that name of Panchubha Hajaji Jadeja is written as purchaser and name of Sha Dungarshi Shivji through power of attorney Sha Champashi Nagshi is written as seller. Further, property is survey no.22 and the sale is mention as aada ank chheda chhut transfer(mortgage transfer). So, it transpires that this deed is not absolute sale deed but it is a deed of mortgage transfer. Further, it transpires that particular regarding seller of this deed Panchubha Hajaji Jadeja has also possesses this property by aade

aank(mortgage transfer) is also mention in it. Now, the plaintiff has produced revenue record of suit property and various mutation entry vide Mark-3/2 to 3/15 and order of Collector, Bhuj vide Mark-3/16. By perusing revenue records it transpires that name of Sha Dungarshi Shivji and Panchubha Hajaji Jadeja are mention in it as possessor. Further, mutation entry no.3605, 3948, 4203 were rejected, whereas mutation entry no.4174 and 4749 were certified on 29/4/2016 and 14/12/2018 respectively wherein name of defendants were entered as legal heirs of Sha Dungarshi Shivji in revenue record of suit property and later defendant n.2 to 4 have relinquished their right. So, as per Mark-3/14 and 3/15 name of defendant no.1 only is in the revenue record. Further, perusing to the order of Collector at Mark-3/16, it appears that Collector has also made remarks that property is mortgaged property and mortgagee has sold this property and after lapse of long time effect of sale deed cannot be given and thus he has rejected revision of plaintiff. Now, looking to the plaint and present application it transpires that plaintiff has not mention any particular regarding when and how defendants have tried to sell suit property or dispossess the plaintiff. In fact plaintiff himself has pleaded in his plaint and in this application that defendants may sell suit property or may dispossess him. So, it appears that there is no such instance as alleged by plaintiff, occurred with plaintiff by defendants but plaintiff has asked for interim injunction against defendants based on possible future act. which is not acceptable for relief under Order-39 Rule-1, 2 of the Civil Procedure Code. It is also pertinent to note that plaintiff has claimed relief of interim injunction and not permanent injunction against defendants in his plaint. So, when plaintiff has not asked for relief of permanent injunction in his plaint, then how can he be entitle for interim injunction vide this application. In such circumstances looking to all these aspects and facts of plaintiff, it can be said that plaintiff has not prima facie case and he is not

entitled for interim injunction. Further, considering principle of balance of convenience and irreparable loss, it appears that balance of convenience is not in favour of plaintiff as plaintiff fails to show any hardship. Further, plaintiff will not suffer any irreparable loss which cannot be compensated in terms of money in absence of interim injunction as he has come before the court after long period.

[7] So, in view of the above discussions, it transpires the plaintiff is not entitled for interim injunction and he cannot be said to have established prima facie case for temporary injunction against the defendants, since plaintiff failed. It is well settled law that no temporary injunction would be granted in favour of person who fails to show prima facie case. Furthermore, it has been held by the Hon'ble Apex court in para-13 of its pronouncement in "Kashi Math Samsthan v. Srimad Sudhindra Thirtha Swamy" reported in AIR 2010 SUPREME COURT 296 that

*“It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favor and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favor even if, he has made out a case of balance of convenience being in his favor and would suffer irreparable loss and injury if no injunction order is granted”.*

So, in view of aforesaid discussion and reasons, the application for temporary injunction is liable to be rejected. Hence, this

Court hereby passes following order in the interest of justice.

**-: ORDER :-**

- The application for temporary injunction of plaintiff is hereby rejected.
- Cost shall be the cost in the main suit.

Signed and pronounced today on 2nd day of February, 2023, in the open Court.

Date: 02/02/2023  
Place : Mandvi.

**(Harshadbhai Shanabhai Chavda)**  
Addl. Civil Judge, Mandvi-Kachchh.  
Judge Code-GJ01534