

**Order Below Exhibit 5**  
**In**  
**Regular Civil Suit No. 93 of 2019**

[1] Present application has been preferred by the plaintiffs under Order 39 Rule-1,2 read with Section-151 of Civil Procedure Code and prayed for temporary injunction to restrain the defendants, from alienating 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 defendant No.1, 5, 3 & 4 have appeared before this Court through their Advocate and submitted their reply vide Exh-21, 29 and 42 respectively. Whereas defendant no.2 has appeared but not filed any reply and defendant no.6 has not appeared before the Court though served notice, order of Ex-Parte was passed against it. The plaintiffs have produced list of documents vide Exh.3. Whereas the defendant side has produced list of documents vide Exh-22 and Exh-43.

[3] Ld. Advocate for the plaintiffs has submitted that the plaintiffs have filed the present suit for redemption of the mortgage, declaration and perpetual injunction. It is further submitted that the suit property is an ancestral property and it was in the name of their predecessor Lt. Jadeja Khetubha Murvaji and he has mortgaged the suit property to the Godavariben Naranji Thakkar due to poor economic condition. It is further submitted that entry to that effect was entered in revenue record vide mutation entry no.13 at Mark-3/10. It is further submitted that the suit property came with defendants through subsequent mortgage transfer deeds and name of defendant have entered in revenue record of the suit property. It is further submitted that name of defendants are on revenue record of the suit property but they are not owners and only mortgagee. It is further submitted that the defendants are trying to alienate the suit property

to the third party and therefore, the present application is filed by the plaintiffs. It is further submitted that the plaintiffs are having prima facie case, balance of convenience is also in their favour and they will suffer irreparable loss if temporary injunction would not be granted in their favour. Therefore, it is required to grant the present application.

[4] Ld. Advocate for the defendant no. 1, 5, 3 and 4 have submitted their written arguments to this application vide Exh- respectively. Wherein they have submitted that the plaintiffs have filed the present suit for redemption of the mortgage but they have not produced any mortgage deed. It is further submitted that the suit property is not in possession of the plaintiffs. It is further submitted that the plaintiff are creating pleading based on false facts. It is further submitted that the defendants are on record of the suit property since and possession of the property is also with them. So, it is submitted that the plaintiffs are not having prima facie case, balance of convenience is also not in their favour and they 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 plaintiffs are claiming their right over the suit property as legal heirs of Lt. Jadeja Khetubha Murvaji but the plaintiffs have not produced pedigree of Lt. Jadeja Khetubha Murvaji. Now, the main contention of the plaintiff side is that the suit property is mortgaged property and defendants are having it in the capacity of mortgagee. So, plaintiff side is required to prima facie establish this fact. Now, looking to the documents produced by the plaintiffs in support of their claim, it appears that Mark-3/1 and 3/2, which are copies of villaige form no.7 & 12 and 8 and name of Dayalgar Karshangar is there. Mark-3/3 is mutation entry no.258 by which, name of Dayalgar Karshangar was entered in revenue record of the suit property. It further transpires from this document that Barot Haridan Harbham has right to redempt mortgage is also mentioned in it. It further transpires from the documents produced at Mark-3/1 to 3/4 are copy of village form no.7, 8-A of R.S. no.56(old no.11) and 88(old no.27), wherein name of defendant no.1 is in it. Mark-3/5 to 3/8 are copy of village form no.7, 8-A of R.S. no.51(old no.18/ paiki 1) and 50(old no.18), wherein name of defendant no.2, 3 and 4 are in it. Mark-3/9 and 3/10 is copy of mutation entry no.13, which is pertaining to survey number 11, 27 and 18, wherein name of Godavariben Naranji Thakkar is mentioned and name of Jadeja Khetubha Murvaji is also mention as original Inamadar. Mark-3/11 is copy of mutation entry no.92 which is pertaining to survey number 11, 27 and 18, wherein Godavariben Naranji Thakkar will received possessor right on payment of six Pat and said entry was rejected due to non agriculturist.

Mark-3/12 is copy of mutation entry no.286, pertaining to suit property was given by Godavariben Narayanji Chothani to her grandson Paresh Subodh Chothani vide registered gift deed. Mark-3/13 is copy of mutation entry no.308, pertaining to suit property was given by Godavariben Narayanji Chothani to her grandson Paresh Subodh Chothani vide registered gift deed, which was certified on 25/2/99. Mark-3/14 to 3/18 are copies of mutation entry no.604, 617, 618, 636 and 671 pertaining to family distribution, sale deeds and inheritance in revenue record of the suit property. Mark-3/19 is is a copy of mutation entry no.693 of promulgation. Mark-3/20. 3/21 and Mark-3/22 are copies of sale deed no.606, 607 and copy of receipt thereof in respect of suit property. Looking to all these documents, it appears that name of Godavariben Naranji Thakkar was there on revenue record of the suit property at the same time name of Lt. Jadeja Khetubha Murvaji also mention as original Inamdar. Now, predecessor of plaintiffs Lt. Jadeja Khetubha Murvaji, how and when become owner of the suit property is not pleaded by plaintiffs. Further, it transpires that name of defendant no. 1 to 4 were there in revenue record of the suit property. It further transpires that defendant no. 2, 3, and 4 have purchased suit property from defendant no.1 who is legal heir of Lt. Godavariben Naranji Chothani. Further, defendant side has also produced various documents. However, plaintiffs have claimed their right of redemption over the suit property as legal heirs of Lt. Jadeja Khetubha Murvaji, but they have neither shown any pedigree of him in their plaint nor produced any document thereof. Now, by perusing plaint of plaintiffs, it reveals that plaintiffs have not pleaded any particulars regarding when their predecessor has mortgaged the suit property and what was the mortgage money, duration of mortgage and what were the conditions of mortgage. Further, it transpires that plaintiffs have not produced any mortgage deed based on which they claim right of redemption. So, it transpires from the record that the plaintiffs have not established the facts that time of suit

property was mortgaged, duration of mortgage, mortgage money, conditions of the mortgage. Further, the plaintiff side has done only pleadings regarding threat of alienation of suit property by the defendants but not able to plead any particular incident or act of defendant in this regard. In such circumstances it clearly appears that plaintiffs are not able to establish prima facie case in their favour. Therefore, it can be said that the plaintiffs have failed to establish prima facie case for interim injunction. Further, looking to the principle of balance of convenience, it appears that name defendants are on record of right of the suit property, whereas plaintiffs are not having any supportive documents, so balance of convenience cannot be said in favour of plaintiffs. Further, it cannot be said that plaintiffs will suffer such loss in absent of interim injunction, which cannot be compensated in terms of money. So, on peculiar facts of this case, plaintiffs have not shown three principles for interim injunction in their favour and therefore they are not entitle for any interim injunction relief.

[7] So, in view of the above discussions, it transpires the plaintiffs cannot be said to have established prima facie case for temporary injunction against the defendants, since the plaintiffs failed. It is well settled law that no temporary injunction would be granted in favor 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 of plaintiffs is liable to be rejected. Hence, this Court hereby passes following order in the interest of justice.

**:-ORDER:-**

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

Signed and pronounced today in the open Court.

Date: 08/09/2022  
Place : Mandvi.

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