

**ORDER BELOW EXHIBIT 5 IN REGULAR CIVIL SUIT**  
**NO. 2/2023**

1. Read the application and the reply filed thereof. This court has gone through the record and pleadings of the plaintiff. The oral, written arguments of learned Advocates for the parties with the ratio produced are duly taken into consideration. To adjudicate the application following points for determination may arise.

1. Whether the plaintiff show his *prima facie* case?

2. Whether the Balance of convenience is in favor of the plaintiff?

3. If injunction would not be granted than irreparable injury will cause to the plaintiff?

4. What order?

2. My answer regarding points for determination:

[1] In Negative.

[2] In Negative.

[3] In Negative.

[4] As per final order.

**Findings:**

3. As all the issues are interrelated and interconnected, it is in the interest of justice to deal with all the issues together. As per order 39 R 1 and 2 of the Code of Civil Procedure, the temporary injunction can be granted by a court in the following cases:

*(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or*

*(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,*

*(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.*

The power to grant a temporary injunction is in the discretion of the court. This discretion however, should be exercised reasonably, judiciously and on the legal principles. Injunction should not lightly grant as it adversely affects the other side. Generally, before granting the injunction, court must satisfied about the following aspects namely, *prima-facie* case, irreparable injury and balance of convenience.

4. The first rule is that the applicant must make out a ***prima facie case*** in support of the right claimed by him. The court must be satisfied that there is a bona fide dispute raised by the applicant, there is strong case for trial which needs investigation. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a *prima-facie* case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.

5. Existence of the *prima facie* case alone does not entitled the applicant for a temporary injunction, but the applicant must satisfied the court that he will suffer ***irreparable injury*** if the injunction as prayed for is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

6. Third condition for granting interim injunction is that the **balance of convenience** must be in favor of the applicant. In other words, court must be satisfied that the comparative mischief hardship or inconveniences which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

7. This Court is not preventing itself from quoting celebrated and remarkable observation by **Lord Diplock** in **American Cyanamid Co. V/s. Ethicon Ltd 1975(2) WLR 316,**

*“The object of the interlocutory injunction is to protect the plaintiffs 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 favor at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favor at the trial. The court must weigh one need against another and determine where the balance of convenience lies.”*

8. To prove the contentions of present application, the plaintiff has to *prima facie* show that alleged agreement to sell was executed between him and late Laxmiben Shankardan Gadhvi and pursuant to same, the possession of the suit property was handed over to the plaintiff. It is pertinent to note that the plaintiff had submitted that the agreement to sell of suit property was executed by the plaintiff with late Laxmiben Shankardan Gadhvi who was the mother of defendants wherein the plaintiff had paid Rs.20,000/- as consideration amount. The said agreement to sell is produced on record vide mark 3/1. Perusing the same, it appears that the said agreement to sell is not registered as per law but looking to the law, such agreements are admissible in law in the suit for specific performance. The defendants had denied the contentions in written reply vide exhibit 9. It is well settled principle of law when any document is to be executed, the contentions of document is to be taken into consideration and statement must show the intention of parties. Now, perusing the agreement to sell, it appears that time was the essence of contract wherein 90 days time period was mentioned. It is evident from the record that nothing is produced on record to show that any notice was given to late Laxmiben Shankardan

Gadhvi by the plaintiff or had showed his readiness and willingness for execution of sale-deed. Also, the plaintiff had submitted before this court that the suit property is in his possession, but nothing is produced on record to prove the said contention. The *rojkaam* is produced on record but the same is not sufficient to prove *prima facie* that the possession lies with the plaintiff. It is also pertinent to note that late Laxmiben Shankardan Gadhvi had died in the year 2013 and nothing is produced to show that any action was taken by the plaintiff since 2013 till 2023. Merely stating that oral transaction took place is not sufficient for grant of temporary injunction. Thus, this Court is of the view that the plaintiff has failed to prove *prima facie* case in his favour.

#### 9. Balance of convenience and Irreparable injury

The second and third point which is to be decided while deciding the injunction application is regarding the balance of convenience and irreparable injury. Before granting temporary injunction, this court must be satisfied that the comparative mischief/hardship or inconveniences which is likely to be caused to the plaintiff by refusing the injunction will be greater than that

which is likely to be caused to the opposite party by granting it. In the present matter, the plaintiff had failed to show his *prima facie* and therefore, this court is of the view that even the balance of convenience is not in the favor of the plaintiff. Also, if the application will not be granted, it will not lead to hardship upon the plaintiff as this juncture. As far as irreparable loss is concerned, this court is of the opinion that irreparable loss do not fall in the favour of plaintiff. Taking all the issues, discussion and law into consideration, this court is of the view that the present application is not tenable. Therefore, in the interest of justice, I pass the following order:-

**:: O R D E R ::**

- The application is hereby rejected.
- Parties are directed to co-operate in expeditious trial of this matter.
- No order as to cost.

17/01/2024  
Nakhatrana

**(Romit Anilkumar Agrawal)**

Principal Senior Civil Judge  
Nakkhatrana

**GJ0933**

**REGULAR CIVIL SUIT NO. 2/2023**

**ISSUES**

Exhibit:-25

1.Whether the plaintiff proves that late Laxmiben and he had entered into agreement to sell suit property dated 16/06/2006?

2.Whether the plaintiff proves that he had given Rs.20,000/- out of total consideration amount of Rs.30,000/- as earnest money?

3.Whether the plaintiff proves that the suit property is in his possession?

4.Whether the plaintiff proves that he was ready and willing to perform his part which is denied by the defendants?

5.Whether the plaintiff is entitled for the relief as prayed for?

6.What order and decree?

17/01/2024

Nakhatrana

**(Romit Anilkumar Agrawal)**

Principal Sr. Civil Judge

**Nakhatrana. GJ00933**