

**~:: ORDER BELOW EXHIBIT - 5 ::~**

1. Read the application and heard the Ld. Advocate for the plaintiff. Also heard the Ld. Advocate for the defendant No.2.
2. The plaintiff has instituted the suit for execution of sale agreement, cancellation of sale deed, declaration and cancellation of deed and permanent injunction with respect to the properties situated in the sim of Moje : Moyan, Sub-District : Jotana, District : Mahesana as described below :-

Sr. No.	Revenue Survey/Block No.	Old Survey/Block No.	Area Hec-Are-Sq.mtrs.	Value (Rs.)
1	300	55	0-48-13	2-77
2	301	56	0-53-01	3-34
3	315	54	0-44-95	2-80
4	316	53	0-47-87	2-76

**(herein after referred to as the 'suit properties').**

- 2.1 The plaintiff has averred that, the plaintiff has determined to purchase the suit properties from the defendant No.1 and out of the total sale consideration amount of Rs.59,50,000/-, the plaintiff has paid earnest money amounting to Rs.20,00,000/- and accordingly on 14.12.2021 the defendant No.1 has executed sale agreement in favor of the plaintiff and notarised vide Sr. No.89/2021. Thereafter, the defendant No.1 has issued Notice in daily news paper for Title clear certificate and the plaintiff has paid total Rs.42,00,000/- by way of various cheques from the account of plaintiff's father

Patel Ranjnikant Dahyalal and cash to the defendant No.1 and it was decided to pay the remaining amount at the time of execution of sale deed. In nutshell, the plaintiff has stated the main cause of the suit is that, sale agreement has been executed in favor of the plaintiff on dtd.14.12.2021 and, thereafter, on 09.03.2022 the plaintiff has paid online token for registration of the sale deed but, it has come into knowledge of plaintiff that on 10.03.2022 the defendant No.1 has executed sale deed in favor of the defendant No.2 vide Sr. No.261/2022 illegally and consequently, the plaintiff has filed objection application before the Sub-Registrar, Jotana but without taking into consideration the said application, order has been passed on 23.03.2022 and entry registered in Village Form No.6 vide entry No.1357. As against the same, objection application has been filed on 28.03.2022 and registered Dispute Case No.121 /2022 whereby the Prant Office has rejected objection application on 24.06.2022 and passed order to certify the entry No.1357. Under such circumstances, the plaintiff is constrained to file the suit and it will take time to decide the entire suit, thus, the plaintiff has preferred the present application below Exh.5 against the defendants to get temporary injunction in respect of the suit properties. The plaintiff has produced documents vide DE List Exh.3.

3. On service of summons, defendant No.1 did not remain present before the court and after providing sufficient opportunities, order has been passed to proceed the matter as ex-parte against the defendant No.1. Whereas,

the defendant No.2 remained appeared before the court through the Ld. Advocate and filed their written statement vide Exh.13, whereby, defendant No.2 has denied the allegations and averments made by the plaintiff in toto. The defendant No.2 has vociferously contended that, the defendant No.1 has determined to sell the suit properties to the defendant No.2 against sale consideration amount of Rs.21,91,748/- and accordingly, on 09.03.2022 they have obtained token for registration of the sale deed and at the time of registration, the defendant No.2 has given cheques to the defendant No.1 for the payment of sale consideration amount and thereby, the defendant No.1 has executed registered sale deed in favor of the defendant No.2 vide Sr. No.261/2022, as against the said sale deed, the plaintiff has filed objection application illegally and the thus, the Sub-Registrar has rejected such application and therefore, entry of the registered sale deed has been registered in Haq Patrak as on 23.03.2022 vide entry No.1357. The defendant has contended that, against the said entry, the plaintiff and Nadiya Dilipbhai Bhikhabhai and Doshi Prafulkumar Popatlal have filed objection application which were rejected by the Prant Officer and granted entry pertaining to the sale deed. Further, the defendant has contended that, as per say of the plaintiff, the plaintiff has purchased the suit properties on 16.11.2021 but on that day, the defendant No.1 did not became owner of the suit properties as suit properties were of the joint ownership and thereafter due to distribution, the defendant No.1 became owner of the suit properties,

thus, the said sale agreement is void-ab-initio. Further, it is contended by the defendant No.2 that, in the sale agreement adduced by the plaintiff, period of the sale agreement was mentioned as 45 days and also stated that remaining amount would be paid at the time of execution of registered sale deed and accordingly, date of the said sale agreement was dtd.14.12.2021 and 45 days would be completed on 28.01.2022 but the plaintiff has neither followed any procedure to get back the consideration amount during such period nor made any effort for execution of registered sale deed, all such facts are not mentioned by the plaintiff in the suit, thus, the plaintiff has suppressed the material facts in the suit. Further, the defendant No.1 has sold the suit properties to the defendant No.2 along with title clear and it is also mentioned in the sale deed that the defendant No.1 has not executed any other sale agreement or contract and even if any dispute raised with respect to the suit properties then defendant No.1 is bound to remove such dispute at the cost of the defendant No.1, thereby, the defendant No.1 has concurred the fact that prior to sell the suit properties to the defendant No.2, the defendant No.1 has not executed any agreement in favor of anybody and thus the defendant No.1 has executed registered sale deed in favor of the defendant No.2 legally before the Sub-Registrar Office and as such, the defendant No.2 is bonafide purchaser of the suit properties and the defendant No.2 is holding possession of the suit properties and also entry pertaining to sales has been approved by the Revenue Authority. Under such circumstances, if the temporary injunction passed

against the defendant No.2, then he will have to suffer irreparable loss and against the provisions of law and there is no prima facie case against the defendants, hence, the suit of the plaintiff is not tenable and the plaintiff is not entitled for any relief. On the foregoing grounds, the defendant No.2 has prayed to dismiss the suit and also prayed to grant compensatory cost from the defendant.

4. Heard the Ld. Advocate for the parties.
- 4.1 Perused the written arguments produced by the Ld. Advocate for the plaintiff vide Exh.18 and defendant No. 2 vide Exh.21.
5. Perused the material produced on record and considering the pleadings of the Ld. Advocate for the plaintiff, following issues have been framed to decide the present application below Exh.5 : -

~:: **ISSUES** ::~

1. Whether the plaintiff have a prima facie case in their favour ?
  2. Whether the balance of convenience is in favour of the plaintiff?
  3. Whether an irreparable injury will be caused to the plaintiff if temporary injunction is not granted ?
  4. What order ?
- 5.1 My findings to the above points are as under :

- (1) Issue No.1 : **In Negative.**
- (2) Issue No.2 : **In Negative.**
- (3) Issue No.3 : **In Negative.**
- (4) Issue No.4 : **As per final order.**

**-:: REASONS ::-**

**→ Issue Nos.1 to 3 :~**

6. All these issues are inter-connected with each other and in order to avoid repetition of the facts, all these issues are dealt and discussed together.
7. The plaintiff comes with the pleading that defendant No.1 was intended to sell the suit properties then the plaintiff was interested to purchase the said suit properties and therefore, plaintiff and defendant No.1 have executed an agreement to sell the suit properties and price of suit properties was fixed at Rs.59,50,000/- and out of that plaintiff has paid up total amount of Rs.42,00,000/- through cash as well as cheques in favor of defendant No.1 and agreement to sell was executed on 14.12.2021 and copy of the said sale agreement is produced vide Mark-3/6 and copies of promissory Note as well as payment receipts and bank statement showing realization of cheques are produced vide Mark-3/7. Further, according to plaintiff when he wants to perform his contract and got revenue records the suit properties, he found that, the defendant No.1 has executed registered sale deed

of suit properties in favor of defendant No.2 and when an agreement to sell is in existence then how defendant No.1 could execute registered sale deed in favor of defendant No.2 and if defendant No.2 will make another transactions in future then plaintiff would have to suffer very irreparable loss and plaintiff has to enter into multiplicity of proceedings. The Ld. Advocate for the plaintiff has further argued out that defendant No.2 without scrutinising revenue records as well as to immerse the right of plaintiff, defendant No.1 had falsely and fraudulently executed the registered sale deed of suit properties in favor of defendant No.2.

7.1 While on the other hand defendant No.1 is not remained present to defend the present application but defendant No.2 is remained present through his Ld. Advocate and filed written statement and Ld. Advocate for the defendant No.2 has argued out that, the defendant Nos.1 & 2 both have agreed and thereafter, obtaining title clearance certificate, executed registered sale deed of suit properties and said sale deed is registered before the office of the Sub-Registrar and the said registered sale deed is registered in the office and mutation entry is also made by the revenue authority and thereby, defendant No.2 becomes bonafied purchaser of the suit properties and his name is running in the revenue record as

owner and occupier of the suit properties. It is also contended by the defendant No.2 that against the entering name of defendant No.2 as owner by way of registered sale deed, the present plaintiff has raised dispute before the concerned revenue authority but the same were rejected by the concerned revenue authority i.e. the Prant Officer, Kadi. Moreover, he has submitted that, whatever act done by defendant No.1 with plaintiff is not known by defendant No.2 and defendant No.2 has paid up total consideration amount of registered sale deed to the defendant No.1 and till date defendant No.1 has not raised any dispute regarding non receipt of consideration amount. He has further submitted that, plaintiff without scrutinising the revenue record of suit properties entered into sell agreement with defendant No.1 , then, defendant No.2 is not liable for any wrong act done by defendant No.1 with plaintiff. He has further submitted that, the date of an agreement to sell produced by plaintiff is 23.03.2022, it seems that, after executing registered sale deed of suit properties on 10.03.2022, defendant No.1 had executed a bogus banakhat with plaintiff and therefore, plaintiff is not entitled to get any relief at this stage.

8. Now considering averments of both sides and documents produced on record, it transpires that, defendant No.1 had executed an agreement

to sell of suit properties on 14.12.2021 and defendant No.1 has obtained almost an amount of Rs.42,00,000/- towards sale consideration amount from plaintiff and defendant No.1 has to execute registered sale deed of suit properties as per terms and conditions mentioned in the Banakhat. In spite of that, the defendant No.1 with bad intention to get more money entered into registered sale deed of suit properties with defendant No.2 on 10.03.2022. (copy is produce vide Mark-3/15). Herein this suit, the defendant No.1 though duly served but did not remain present and not filed written statement that means defendant No.1 remain silent about both transactions so done by him with plaintiff as well as defendant No.2. Ofcourse, the registered sale deed of suit properties executed with defendant No.2 and on that ground, name of defendant No.2 is entered as owner and occupier of the suit properties and against that plaintiff as well as three other persons have preferred dispute application before the Prant Officer, Kadi but Prant Officer, Kadi has rejected their dispute application (copy produced vide Mark-3/11) and name of defendant No.2 is continue as owner and occupier of the suit properties. There is no any prima facie evidence brought on record by plaintiff that after execution of Banakhat he was ready and willing to perform his part within prescribed time limit of 45 days as mentioned in the

Banakhat. The plaintiff has pleaded that he has paid up huge amount of Rs.42,00,000/- to defendant No.1 but for that aspect only defendant No.1 is liable to repay to plaintiff and up to 10.03.2022, as there is no any effort made by plaintiff to get registered sale deed of suit properties in his favor then defendant No.2 is not said to be liable for the act of defendant No.1. It is also contended by the defendant No.2 that at the time of registered sale deed, defendant No.1 has mentioned that, prior to that he had not made any agreement or contract with any party, and thereafter, title clearance certificate was obtained by defendant No.1 and accordingly, defendant Nos. 1 & 2 have entered into registered sale deed of the suit properties. Therefore, considering the actual position of the suit properties, defendant No.2 is at present owner and occupier of suit properties and plaintiff has no direct any liability with defendant No.2 in respect of suit properties.

9. Therefore, in my view plaintiff is failed to establish his prima facie case and balance of convenience is not in his favor but in favor of defendant No.2 and if injunction will be granted in favor of plaintiff then, defendant No.2 has to suffer irreparable injury/loss because he is a bonafide purchaser of the suit properties.

Hence, I reply issue No.1 to 3 accordingly in **negative** and for issue No.4, I pass the following order.

-:: ORDER ::-

1. The present Exh.5 application is hereby **Rejected.**
2. The cost will be in the cause of suit.

Signed and pronounced in the open court on 10<sup>th</sup> day of March, 2025 at Kadi.

Place: Kadi.  
Date: 10.03.2025.

**(Jayesh A. Dave)**  
Additional Senior Civil Judge,  
Kadi, Dist. Mahesana  
[Code No.-GJ00712]