

THE HON'BLE 3RD ADDITIONAL SENIOR CIVIL COURT, KADI
ORDER BELOW EXHIBIT – 5
IN REGULAR CIVIL SUIT NO.80/2022

1. The plaintiff has filed present suit to get back the conditional sale deed executed at the cost of of Rs.4,03,100/- in favour of the defendant Nos.1 to 3 of the land bearing survey NO.1779 and for declaration of the sale deed executed by defendant Nos.1 to 3 in favour of defendant Nos.4 & 5 at the cost of Rs.6,00,000/- for the agriculture land bearing survey No.1779 and declaration and to get permanent injunction order against defendants in respect of agriculture land bearing survey No.1779, old survey NO.454/3 paiki 2 area Hector-ARE-Sq.mt 0-44-78, value Rs.1.37ps situated at moje village Thol, Taluka Kadi (**hereinafter referred as 'suit property'**) which was continued in the name of plaintiff in the revenue record. Further, it is averred that the suit property sold by the plaintiff to defendant Nos.1 to 3 at the cost of Rs.4,03,100/- on 12/11/2020 through registered conditional sale deed No.8102/2020 which was registered in the office of Sub-Registrar, Kadi. Further, it is averred that as per the terms and condition of the agreement if plaintiff pay the sale consideration amount within five years from dated 12/11/2020 then defendant Nos.1 to 3 had to execute sale deed in favour of plaintiff and return back the suit property and defendant Nos.1 to 3 were agreed upon it and upon requesting by the plaintiff to defendant Nos.1 to 3 they ignored to receive the conditional sale consideration amount from plaintiff and evading to receive the sale consideration amount from plaintiff and not shown any willingness to do so. Further, it is averred that plaintiff has right to get back the sale within the period of five ears and said terms and condition is mentioned in the agreement of sale and defendant Nos.1 to 3 are bound to comply the same. Despite of having facts, defendant Nos.1 to 3 have sold the suit property to defendant Nos.4 & 5 at the cost of Rs.6,00,000/- through registered sale deed NO.16802/2021 on 10/12/2021 said transaction is illegal and

unauthorized and contrary to the interest of the plaintiff. Later, to get back the suit property through execution of the sale deed from defendant Nos.1 to 3, plaintiff has issued notice through Advocate to defendant Nos.1 to 3 to comply the terms and condition of the agreement for cancellation of the previous sale deed made in their favour and execute new sale deed in favour of plaintiff, but defendant Nos.1 to 3 have not acted upon the notice and did not comply the terms and condition of the agreement of sale, hence present suit is filed against the defendants No.1 to 3 to get declaration and cancellation of sale deed of the suit property and for execution of the new sale deed for the suit property in favour of the plaintiff. The plaintiff has also filed present application Exh.5 to get permanent injunction against the defendants that they not to sale, mortgage, transfer or alienate or create any encumbrance over the suit property and not to change or mutate in the revenue record in respect of the suit property neither directly or indirectly or through their agent, servants or person/s. As it will take time to decide entire suit. The contents of Exh.5 are not repeated here again to avoid repetition. The plaintiff has produced documents vide D/List Exh.3.

3. Upon receiving summons/notices, defendants No.4 and 5 remained present through their Ld. Advocate and have filed common written statement at Exh.10. In their written statement, they have denied the facts and averments of the suit as well as injunction application in *toto*. Defendant Nos. 4 & 5 have denied the facts in respect of para Nos.1, 2 and 3 and stated that the suit land never was of plaintiff. Also, defendant Nos.1 to 3 and their family had never gave power of attorney to plaintiff and plaintiff had created false power of attorney and on the basis of said power of attorney, plaintiff had got up registered sale deed NO.4254/2019, dated 16/6/2019 and out of knowledge of the defendants No.1 to 3 and their family members mutated the sale entry No.14331 and same was certified and said deed was executed merely on the plain paper. Further, it is submitted that to avoid police complaint and persuade by the elders of the family,

plaintiff had executed sale deed NO.8108/2020, dated 12/11/2020 in favour of defendants No.1 to 3 and as such through the sale deed, plaintiff had returned back the suit property to its original owners. Further, it is submitted that out of knowledge of the defendant Nos.1 to 3, seller Patel Ashwin Atmaramdas executor of registered sale deed NO.8808, had by fraudulently and by hatching conspiracy and inserted false and illegal condition in the conditional sale deed which can never be complied. The terms and condition is that, *'the seller sell the suit property i.e. survey No.1779 to purchaser at the cost of Rs.4,03,100/- (Rupees Four Lac Three Thousand One Hundred Only) through the registered sale deed, which the sell consideration amount return back by the purchaser to seller within five years from date of execution of the deed and if seller fail to pay the sell consideration amount during the period to purchaser, then sale shall be considered as permanent for which seller shall have not to raise any objection, dispute, protest or restrain, as such seller and purchaser have executed the conditional sale deed subject to certain terms and conditions'*.

Further, it is submitted that there was no terms and conditions were executed between plaintiff and defendant Nos.1 to 3, but out of knowledge of defendant Nos.1 to 3, plaintiff had fraudulently and cleverly inserted the condition in the registered sale deed, said condition is contrary to the provision of the Specific Relief Act, hence suit is false and illegal, which is liable to be dismissed with cost. Further, it is submitted that para Nos.4, 5 at page 9 that seller had stated that the suit property sell to purchaser and same is bound to his legal heirs and they shall have no right to raise any objection or dispute in respect of the said land and they have no right over the land. As such, suit of the plaintiff is false and illegal which is liable to be dismissed. Further, it is submitted that condition as stated by the plaintiff in sub paras at page Nos.8 & 9 are contrary to the condition stated in the agreement and plaint, contradiction which clearly appeared. Moreover, on the one hand plaintiff stated that he had received the amount and on the other he had stated to repay within five(5) years and plaintiff had stated that he had grossly

sold the land and stated that wherever purchaser shall sale, mortgage, or transfer then plaintiff's heirs, guardian and other shall have no dispute or objection over it and there shall not be any right over it. As such, there is clear contradiction in statement of plaintiff in the plaint and condition stated in the deed, under the circumstance, suit as well as injunction application of the plaintiff be dismissed with cost under the provision of Specific Relief Act. Further, it is submitted that defendants No.4 & 5 have purchased the old tenure agriculture land bearing ledger No.3254, upon re-surveyed, given it block No.1779 (old survey NO.454/3/paiki 2) area Hectore-ARE-Sq.mt 0-35-55, value Rs.1.09ps situated moje village Thol, Taluka Kadi from the original owners through registered sale deed NO.16802/2021 through paying cost of Rs.6,00,000/-(Rupees Six Lacs) as such legally purchased and since then they became the legal owners and occupiers of the land and sale entry mutated vide entry No.15949 on 10/12/2021 and same was certified on 26/1/2022 and thereby defendants No.4 & 5 became the bona fide purchasers and their names are still continued in the revenue record. Further, it is submitted that at the time of filing of the suit, the land is of having nature of non-agriculture land, hence equity of the land is changed and plaintiff has suppressed the material facts and abuse the process of the Ld. Court, hence in the interest of justice suit as well as injunction application of the plaintiff be dismissed with cost. Further, it is submitted that plaintiff has no prima facie case, balance of convenience is not in favour of the plaintiff, but in favour of the defendants and defendants have prima facie case and balance of convenience is in favour of the defendants and if injunction order may not be granted in favour of plaintiff, then plaintiff would not suffer any loss or injury, whereas if injunction order be granted in favour of plaintiff as prayed for, then irreparable loss would be caused to defendants and thereby they have to pass multiplicity of proceedings. So considering the above, suit as well as injunction application of the plaintiff be dismissed with cost and compensatory cost be awarded to them from plaintiff.

4. In support of the defence defendant Nos.4 & 5 have produced documentary evidence vide D-List Exh.11.
5. Considering the pleadings of parties and averments of defendants, the following issues are raised to decide the present Exh.5 application.

I S S U E S

1. Whether plaintiff can get relief as prayed in prayer clause of Exh.5 ?
 2. What order ?
6. My answer to the above issues are as follows :

1. Issue No.1 : In- Affirmative.
2. Issue No.2 : As per final order

REASONS

7. issues NO.1 to 2 :

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. as under;

8.1 First of all I, reproduce the provision of the injunction herein below for- order 39 Rule-1-"Cases in which temporary injunction may be granted"--Where in any suit it is proved by affidavit or otherwise-(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 Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or dispossession of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

Rule 2 Order XXXIX of Code of Civil Procedure 1908 "Injunction to restrain repetition or continuance of breach" (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract, or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may be order grant such injunction, on such terms as to the of the durations injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

Now considering above provision with fact of the case on hand,

And the submissions made by both the parties in this case, first of all document which is the subject matter of the suit i.e Registered sale deed which is executed by the Plaintiff in favour of defendant No.1 to 3 Regi. No. 8808-2020, Dt.12-11-2020,, considering the conditions stipulated therein, para -8. સદરહુ સર્વે નબર ૧૭૭૯, વાળી જમીન અમે। હાલના લખી આપનારે, વેચાણ અવેજ ની પુરે પુરી રકમ , રૂ.૪,૦૩,૧૦૦/- (

અકે રૂપીયા ચાલ લાખ ત્રણ હજાર સો પુરા) ના લઈને, તમો વેચાણ લેનારને, પાકો રજી. વેચાણ દસ્તાવેજ, કરી આપી, વેચાણ આપીએ છીએ, જેરકમ અમો વેચાણ આપનારે, તમો વેચાણ લેનારને રજી. દસ્તાવેજ કર્યા તારીખથી, વર્ષ-૫, (પાચ) મા પરત ચુકવી સદરહુ જમીન પરત મેળવી લેવાની રહેશે, પરતુ જો અમો વેચાણ આપનાર તમો વેચાણ લેનારને, સદર જમીન ની વેચાણ અવેજનની રકમ ૫ (પાચ) વર્ષની, મુદત દરમીયાન પરત ન ચુકવી શકીએ, તેા હાલનુ વેચાણ, કાયમી ગણવાનુ રહેશે, જે અંગે, અમો વેચાણ આપનારે કોઈ પણ જાતનો વાધો વીરોધ, કે હરકત અટકાયત કરવાની રહેશે નહી, જે શરતને આધીન અમો વેચાણ આપનારે, તમો વેચાણ લેનારને, હાલનેા વેચાણ દસ્તાવેજ કરી આપેલ છે,

In this regard as per condition Stated in page—8 in third paragraph ,of the document produced at Mark -3/3,it is clear that this sale is done subject to the condition. This sale is not absolute, but it is done subject to certain conditions. Moreover, no any dispute is raised by both the parties in respect to the execution or consideration of the said registered document and no any fact contrary to it is submitted indicating any dispute in this regard.

Thus, by the Plaintiff vide Page No. 8 Para 3,, of the sale deed, as per the conditions, the Vendor has a right upon the disputed property upto the five years from the date of sale thereof and after completion of five years only the purchaser can initiate further procedure upon committing the default for implementation of the conditions by the vendor. But in the present case as per the condition mentioned in registered document No. 8808-2020 Dt. 12-11-2020, No any submission is made prima facie that except this document the Plaintiff has violated the aforesaid terms and conditions of the any other

document by which the right of selling the property to the defendant is made permanent.

Now considering the contention of the defendnant no..4 & 5 in their reply they stated that if consider the subject matter of the suit i. e Regi sale deed No. 8108-2020 Dt.12-11-2020 in which the , writing- recital of the Page No. 9 of the registered Sale , Deed No. 8808 is different than the conditions of previous Page No.8 and the sale is done permanently until the sun and moon shines. Thus, the inconsistency regarding the conditions of Page No.8 and 9 are in registered Sale Deed No. 8808-2020,, Further as per the submission , the defendants they have done the procedure regarding the N.A. purpose of the said land and thus it is submitted that defendant No.4 & 5, are bonafide purchaser.

Simultaneously in this case the present plaintiff in the year 2019 , as power of attorney holder of defendant No. 3 to 5, and as capacity of the Power of attorney he become the vendor of the suit property and other side he also become the purchaser in individually capacity in the year 2019,

In this case considering the submission of both the parties, If consider the say of the defendant No. 4 and 5 the plaintiff has purchased the suit property in 2019, from the defendant No. 1 to 3 and subsequently as there was cheating and irregularity in the said transaction , with regard to the document of 2019 which is executed by the present plaintiff in his favor and other side also himself as executant of the sale

deed in capacity of Principal ,and due to so called fraud made by the plaintiff for avoiding the consequences,then present plaintiff had again sold the said property to defendant No. 1 to 3 in year- 2020, and for that transaction present dispute is raise,

But if the above fact is considered in the case on hand, whatever the submission from the defendant no. 4 &5 for the plaintiff conduct and execution the documents all are at this juncture pleading and nothing more, More over it is also noted that defendant no 1 to 3 are not appear before court even duly serve the summons vide Exi. 6 & 7, and not remain present then court close their right of written statement through order below Exi. 1 on Dt. 20-05-22, so nothing on record at this stage against the Misconduct or adverse behave of the plaintiff in respect of the his earlier transaction of the suit property I.E Regi.Sale deed No.4254-2019 Dt. 10-06-2019, so ultimate examining the subject matter of the suit which is Regi Sale Deed No. 8108-/2020, and looking to the recital of the page -8 , along with examining the other side reply in which , nothing to counter about the execution of sale deed ,

In these circumstances the defendant No.1 and 2 have sold the aforesaid disputed property to the defendant No.3 to 5 violating the legal right of the Plaintiff and hence prima facie it can be believed that the Plaintiff has the conditional right upon the disputed property and the presumption is required to

be drawn that the disputed property is purchased by the defendant No.4 & 5 having all the information about the previous title thereof.

In these circumstances it is not on the record of this case that there was any transaction or agreement separately done by the Plaintiff with defendant No. 1 & 3 ,, and in which the present transaction of the sale deed i.e Regi. No. 8108- 2020 of the disputed property , those conditions which are specified in page -8 are either modified or cancelled.

Hence considering the right of the Plaintiff at the time of purchasing the property by the defendant No. 4 & 5 from the defendant no. 1 to 3 , that time , said property is purchased without any encumbrances, charge and unconditional , so prima facie the Regi. Sale deed No. No. 8108-2020 examining the characteristic of the deed , it is sale with restriction in favour of the defendant No. 1 to 3 by the Plaintiff, So believing the registered document, the rights of the Plaintiff are connected with the said property.

Hence the Plaintiff has a prima facie case and if the injunction order is not issued to the Plaintiff, then Plaintiff is likely to suffer more loss which is irreparable in nature than the defendant. Thus, accordingly Issue No. 1 - answered in favour of the Plaintiff,, is "affirmative" and for issue No. 2 I pass the following order:

:: ORDER ::

The present Ex. 5 application is hereby allowed., Defendants are restraining from selling, transferring or creating mortgage / pledge, charge in any manner in favour of anyone directly or indirectly in respect to the suit land i. e old tenure land situated Mouje Thol, Kadi Dist. Mehasana having old R. Survey No-454/3 paikee 2) New S.No.1779 (Account number -3567) and restrain them from doing any amendment in Government record directly or indirectly till the final disposal of the suit.

The cost will be cause in the suit.

Order signed and pronounced today in Open Court.

Signed and pronounced in the open court on 22 nd day of , 2023 at Kadi.

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| Date : 23 /06 /2023 | [Aniket M. Shukla] |
| Place : Kadi. | 3rd Addl.Senior Civil Judge &Addl. Chief Judicial Magistrate, Kadi [Code No.GJ01139] District Mahesana. |