

ORDER BELOW EXHIBIT - 5 IN R.C.S NO.86/2023

1. Read the application and heard the Ld. Advocate for the plaintiff. Also heard the Ld. Advocate for the defendant.
2. The plaintiff has filed present suit for cancellation of registered sale deed No.1201, dated 18/01/2023 in respect of the bungalow No.13 made on the plot under the area of 150 Sq.mt. wherein there is basement/ground floor and construction on the first floor under the scheme of Shukan Bungalows on the land bearing revenue Survey No.468 situated moje village Kadi Kasba, Sub-District Taluka, Kadi, District Mehsana including the constructed property **(hereinafter referred to as 'suit property')**, defendant has used the power of attorney as holder on behalf of the plaintiff and has executed the registered sale deed in his favour, said registered sale deed registered vide No.1201, in the Sub-Registrar, Kadi, District Mehsana and stated that the said registered deed is void ab initio. Plaintiff has filed the suit inter alia filed application-Exh.5. To avoid repeatation contents of Exh.5 application are not re-produced again. ..As such, it is requested that the permanent injunction order be passed in favour of the plaintiff and against the

defendant and other relief as deems it fit and proper and cost of the application-Exh.5 be awarded from defendant.

3. The defendant is appeared through his Ld. Advocate and filed W.S. vide Exh.12, wherein contended that contents of suit as well as injunction application are not true and denied in *toto*. He has narrated true facts that, he has purchased the suit property from plaintiff and amount of Rs.13,00,000/- paid to plaintiff through cheque NO.000091, dated 10/10/2022 of Shri Kadi Nagarik Sahakari Bank, Kadi Branch and upon receiving sale consideration amount by the plaintiff, he has executed and registered power of attorney No.16720/2022, dated 11/10/22 in the Sub-Registrar Office, Kadi in favour of defendant and all the rights in respect of the suit property conferred upon to defendant. It is further submitted that later it was came to know that plaintiff has received sale consideration from one Patel Jayrambhai Dahyabhai resident of Suncity, S.C. Campus, Kadi and he has executed a registered Banakhat No.1057/2016, in the year 2016 in his favour. Also, he has many times requested plaintiff to cancel the above referred Banakhat and asked for registered sale deed, but plaintiff has stated that he has conferred all the rights through power of attorney, hence relied upon the power of attorney he has executed

registered sale deed in his own name. It is further submitted that plaintiff has stated all the facts are false and frivolous. Also, when defendant asked plaintiff to vacate the possession of the suit property, plaintiff did not vacate suit property and not to hand over the possession of the suit property, as such plaintiff has shown his malign intention, hence defendant has initiated criminal proceeding against plaintiff and filed complaint against plaintiff on 17/5/2023. So, plaintiff has stated false facts in the suit as well as in his application-Exh.5. It is further submitted that plaintiff has no prima facie case, balance of convenience is not in favour of plaintiff and if injunction order may be granted in favour of plaintiff then defendant would suffer irreparable loss which cannot be compensated in terms of money, hence suit as well as injunction application-Exh.5 of the plaintiff be dismissed with cost.

4. The learned Advocate for the plaintiff has filed written arguments vide **Exh.21** and relied upon the following citations :

- 1) Bharat Petroleum Corporatin Limited Versus Talaja Nagarpalika, in Special Civil Application No.8026 of 2011, date May 09, 2012. reported in 2012(3) GLR 2477 : 2013 (4) CivLj 439.
- 2) Kokilaben Khodidas Patel Versus Natvarlal N.

Patel, in Civil Revision NO.1628 of 1997, date March 17, 2000 reported in 2000(0) GLHEL-HC 206536.

- 3) Rakeshkumar Chandulal Modi Versus Administrator of Shri Aarasuri, in Special Civil Application No.8695 of 2017, date November 23, 2021, date March 17, 2000 reported in 2021(0) AIJEL-HC 244034.
- 4) Manubhai Bhagabhai Patel Versus Cheebabhai Rambhai Patel, in Civil Revision Application No.437 of 1994, date June 28, 1995 reported in 1995 (0) GLHEL-HC 207545.

5. Learned Advocate for the defendant has submitted written arguments vide **Exh.23** which I have perused and heard the Ld. Advocates for the respective parties at length.

Considering the pleadings of parties and averments of defendant, the following issues are raised to decide the present Exh.5 application.

ISSUES

1. Whether the plaintiff has a prima facie case in his 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?

6. My findings to the above points are as under:

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

REASONS

7. **Issues NO.1 to 4 :**

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.

7.1 The plaintiff come with the pleading that he is the owner of the suit property, but due to his illness the defendant has obtained false power of attorney and thereafter by using it the defendant himself by using the fraudulent power of attorney executed a registered sale deed of suit property in his favour, while the defendant has contended that he has paid huge amount of Rs.13,00,000/- (Rupees Thirteen Lacs Only) to the plaintiff. He has further contended that defendant came to know that plaintiff has received sale consideration from one Patel Jayrambhai Dahyabhai resident of Suncity, S.C. Campus, Kadi and has executed a registered Banakhat No.1057/2016, in the year 2016 in his

favour and thereby plaintiff under the guise of his bad health trying to get mercy from Court. On perusal of documents produced on record a copy of registered Banakhat executed in the year 2016 and copy of registered sale deed of the suit property is also produced on record and it transpires that the defendant who happened to be power of attorney holder of the plaintiff executed registered sale deed in his favour. Therefore it seems that there is a registered Banakhat and a registered sale deed of suit property are in existence. Therefore, issues involved between the parties can only be decided after taking evidence at length and if an order for granting of status quo position of suit property when nobody will get any injury / harm. So, I reply issue No.1 to 3 accordingly in the partly affirmative and for issue No.4 I pass the following order.

:: ORDER ::

- 1.The present Exh.5 application is hereby **partly allowed.**
- 2.It is hereby ordered and directed that both parties of the suit are maintained status quo position of the suit property described in para No.2 of the plaint-Exh.1, till final disposal of this suit.

3.This order is only binding to both parties of the suit and not to any other person/Bank/or Financial Institution.

4.The cost will be in the cause of suit.

Signed and pronounced in the open court on 02nd day of December, 2023 at Kadi.

Place: Kadi.

Date: 02-12-2023.

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