



**IN THE COURT OF 2<sup>nd</sup> ADDITIONAL SENIOR CIVIL JUDGE**

**AT MORBI.**

**REGULAR CIVIL SUIT NO.22 OF 2022**

**ORDER BELOW EXHIBIT-05**

1. Read the application & documents produced on record. Heard Ld. Advocate Mr.G.L.Dabhi for plaintiff. For defendant nos.1 to 6 Ld. Advocate Mr.D.R.Adroja carried out arguments. While for defendant no.7 to 9 Ld.Advocate Mr.V.M.Jethloja carried out arguments.
2. Present application is filed by plaintiff seeking order of this Court under Order.39 Rule.1 & 2 of Civil Procedure Code (Herein after referred as C.P.C. for brevity). The property in question is situated in village Khirai of Taluka Maliya(Mi.) bearing revenue survey no.143, ad-measuring he.1-65-92. This is land is in name of defendant nos.1 to 6 in khata no.43.
3. In this suit, upon service of summons and notice, defendants no. 7 to 9 appeared before the Court through their advocate. They filed their written statement at Exh. 10. In this written statement there is para wise denial of the plaintiff's plaint. Additionally, it is stated that present defendants are bonafide

purchaser for value without notice. It is also stated that sale agreement executed in favour of the plaintiff is not registered. Hence, present defendants always considered to be bonafide purchaser when they have purchased suit property after verifying revenue record. It is also stated that after paying consideration amount by registered sale deed present defendants no. 7 to 9 have purchased suit property and hence no injunction can be passed against them.

4. Defendants no. 1 to 6 filed their written statement at Exh. 13. In this written statement it is stated that plaintiff has failed to observe time limit specified in the sale agreement dtd. 10.09.2016. It is stated that from 10.09.2016 within 8 months, plaintiff was required to pay remaining amount but same is not paid by the plaintiff. Thus, it is stated that plaintiff was at fault and plaintiff was not ready and willing to perform his part of contract. In this written statement, defendants no. 1 to 6 also admitted that they have availed Rs.22,41,000/- from the plaintiff but plaintiff did not follow terms and conditions of sale agreement dtd. 10.09.2016. It is also stated that plaintiff's suit is bad due to delay and latches. It is stated that so called sale agreement is of year 2016. Since 2016 till filing of the suit, plaintiff has not shown his readiness and

willingness to perform his part of contract by issuing notice to the defendant no. 1 to 6. It is also submitted that plaintiff has failed to prove that he was and is ready to perform his part of contract. It is also stated that only after execution of sale deed in favour of the defendant no. 7 to 9 plaintiff, all of sudden, filed this suit just to harass the defendant. Lastly, prayer is advanced to reject application.

5. Having heard both sides, this Court has gone through record of the suit. Before this Court pass any order in present application it would profitable to state herein that, general proposition of law has been laid down by Hon'ble Supreme Court as well as Hon'ble Gujarat High Court that in order to claim prohibitory (temporary or permanent) injunction, it is necessary for the plaintiff prove prima-facie case, apart from establishing other two ingredients, namely, balance of convenience and irreparable injury. It is required to be noted that, the grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (i) whether the applicant has a prima facie case; (ii) whether the balance of convenience is in favour of the applicant; and (iii) whether the applicant would suffer

an irreparable injury if his prayer for interlocutory injunction is disallowed.

6. Present suit is filed by the plaintiff seeking specific performance of sale agreement dtd. 22.09.2016. Admittedly, this sale agreement is unregistered. It is the case of the plaintiff that as defendants no. 1 to 6 agreed to sale suit property to the plaintiff he entered into contract with the defendant no. 1 to 6. it is also the case of the plaintiff that per wigha amount of Rs.8,75,000/- was decided between the parties and then after plaintiff has paid 25% amount which come to Rs.22,41,000/-. This sale agreement is notarized and it also appears that this sale agreement is not registered with Sub-Registrar Office. It is the case of the plaintiff as per this agreement defendants no. 1 to 6 were required to prepare measurement sheet and as per measurement remaining amount was to be paid by the plaintiff to the defendants no. 1 to 6. it is also stated that despite of repeated requests of the plaintiff, defendants no. 1 to 6 did not initiate any proceedings to prepare measurement sheet as well as defendants no. 1 to 6 did not opted any proceedings to measure suit property. Thus, it is stated that despite plaintiff was ready and willing since execution of sale agreement dtd. 22.09.2016, defendants no. 1 to 6 did

not prepare measurement sheet and defendants did not provide necessary documents. Plaintiff was not able to get the sale deed executed in his favour. As to cause of action, it is stated that as and when plaintiff came to know that defendants no. 1 to 6 have executed sale deed in favour of defendants no. 7 to 9, cause of action arise for the plaintiff to file this suit.

**7.Learned advocates are heard at length by this Court.**

**7.1.** Learned advocate Mr. G. L. Dabhi for the plaintiff argued that due to non compliance with terms and conditions as to measurement sheet by the defendants no. 1 to 6, plaintiff was not able to get sale deed executed in his favour. He also stated that as per written statement produced vide Exh. 17, defendants no. 1 to 6 have specifically admitted that they have received amount of Rs.22,41,000/- from the plaintiff. This, he stated that there is no dispute as to cause of action of sale agreement between the plaintiff an defendants no. 1 to 6. He also stated that if in this case injunction is not granted in favour of the plaintiff, then plaintiff will have to face multiplicity of proceeding, if suit property is transferred by the defendants no. 7 top 8 in favour of the 3<sup>rd</sup> party. He also stated that when the plaintiff has paid huge amount of Rs.22,41,000/-

then his right in the suit property may be protected. He has also stated that from bare perusal of written statement of the defendants no. 1 to 6, it can be said that plaintiff has proved his prima facie case. He has stated that unless and until necessary documents are provided by the defendants no. 1 to 6 and measurement is carried out and accordingly measurement sheet is prepared, there was no chance for the plaintiff to get sale deed executed in his favour. He has also stated that as the defendants no. 1 to 6 have failed to perform their part of contract, plaintiff cannot be made suffered due to non compliance with the terms and conditions by the defendants no. 1 to 6. Lastly, he stated that huge amount of Rs.22,41,000/- is paid by the plaintiff to defendants no. 1 to 6, right of the plaintiff in the suit property may be protected by granting temporary injunction against the defendants.

**7.2.** Per contra, for the defendants no. 1 to 6, learned advocate Mr. D. R. Adroja carried out his arguments. He submitted that present suit is bad due to delay and latches. He argued that in this case since 2016 till filing of the suit, plaintiff has failed to prove that what steps taken by the plaintiff to get executed sale deed in his favour. He has stated that since 2016 till

2022, plaintiff did not approach defendants no. 1 to 6 to get executed sale deed in his favour. It is also stated that as plaintiff within time prescribed in the sale agreement did not pay remaining amount defendants no. 1 to 6 have all reasons to believe that plaintiff was not ready and willing to perform his part of contract and thus, they have executed sale deed in favour of defendants no. 1 to 9. It is also stated that plaintiff has failed to prove that he was ready and willing to perform his part of contract. Thus, it can be said that plaintiff has not make out any case in form of prima facie case. He also stated that plaintiff's suit is not within limitation as plaintiff has failed to perform his part of contract within time limit prescribed by sale agreement dtd. 22.09.2016. Lastly, he prayed to reject this application.

**7.3.** Learned advocate Mr.V.M.Jethloja for the defendants no. 7 to 9 argued that the defendants no. 7to 9 are bonafide purchasers for value without notice. He has also stated that after carrying out necessary inquiry with the revenue record, defendants no. 7 to 9 have purchased suit property. He has also stated that when sale agreement in favour of the plaintiff is not registered then it can be

said that defendants no. 7 to 9 might not have knowledge as to this sale agreement. He also argued that none of the ingredients namely, prima facie case, balance of convenience and irreparable loss are proved by the plaintiff in this case. He also raised issue as to filing of the suit almost, after 6 years of date of sale agreement. He also stated that only after sale deed was executed in favour of the defendants no. 7 to 9, plaintiff wake up from deep slumber and filed present suit. He also drawn attention of this Court with regard to issue of measurement and measurement sheet as stated by the plaintiff in his plaint as well as sale agreement dtd. 22.09.2016. He drawn this Court's attention to Mark 20/3, he stated that if this document is considered then it can be said that since 2007 this suit property was converted into N. A. and since 2007 measurement of this property was already there on record. He also stated that issue raised by the plaintiff with regard to he was not able to execute sale deed in his favour due to non measurement and non preparation of measurement sheet is not at all believable. Placing his reliance by documents produced by the defendants no. 7 to 9 he stated that when sale deed is in favour of defendants

no. 7 to 9, no in injunction order can be passed against them.

**8.** Having heard Ld. Advocates for either side, this Court has gone through record and proceedings of the suit. Be it noted that, in case of specific performance of the ready and willingness of plaintiff one of the most significant aspect for deciding granting or rejecting order in favour of the plaintiff.

**8.1.** In this suit, it is admitted fact at time of execution of sale-agreement, defendant nos.1 to 6 were owner of the suit property.

**8.2.** In this suit it is admitted that sale-agreement is of dt.22.09.2016.

**8.3.** It is also admitted fact that this sale-agreement is unregistered.

**8.4.** It is also admitted fact that since, till filing of this suit, plaintiff did not issued any notice to the defendant nos.1 to 6 showing his ready and willingness.

**8.5.** It is also admitted fact till filing of the suit, plaintiff did not make any attempt to get measure suit properties within reasonable time.

**8.6.** It is also admitted fact that, till filing of the suit, plaintiff did not issue any notice to defendant nos.1 to 6 to initiate proceedings for measurement of the

suit land.

9. These admitted facts clearly proves that, since execution of sale-agreement, till filing of the suit, plaintiff did not show or plaintiff failed to prove that he was and is ready and willing to perform his part of contract. It is also required to be noted that, grant of injunction in case of specific performance of contract great value is attached to the conduct of the plaintiff. To put it in different words, it can be said that it is for the plaintiff to prove that since execution of sale-agreement he was continuously ready and willing to perform his part of contract.

10. There is a distinction between deadness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For contract, the conduct has to be properly scrutinized. There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. The factum of readiness and willingness to perform plaintiff's part of the party and the attending circumstances. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract. Which is not proved in this suit by the

plaintiff.

**11.** In this suit, on perusal of unregistered sale-agreement dt.22.09.2016 it appears that as per condition No.2, remaining amount was to be paid within nine months. In this suit as this Court has observed earlier, during this nine months what steps are being taken by plaintiff to perform his part of contract is not stated anywhere. Just oral submission is there. Even other-wise, for considerable period of almost six years plaintiff remain totally silence as to get executed sale-deed in favour. from the date of agreement to till the date of suit, the plaintiff sat quiet without taking any steps to perform his part of the contract under the agreement though the agreement specified period of four months within which the plaintiff was expected to purchase stamp paper, tender balance amount and call upon the owners to execute the sale deed. So, delay has brought the situation, where it would be inequitable to give relief of injunction to the plaintiff.

**12.** Fore-going, reasons, this Court has all reasons to believe that, plaintiff has failed to make out prima-facie case. When plaintiff failed to prove first ingredients namely prima-facie case in his favour this Court did not thought it fit to discussed other two

ingredients namely balance of convenience and irreparable loss/injury. Hence, this is case wherein equitable relief can't be granted in favour of the plaintiff. Thence, in better interest of justice following order is passed.

**:- Order -:**

1. Present application is hereby rejected.
2. Cost of the present application will follow the final outcome of the suit.

Signed and pronounced in the open Court today on this 1<sup>st</sup>  
day of March, 2023 at Morbi.

Date : 01.03.2023

(Vikram Karsanbhai Solanki)

Place : M o r b i.

2<sup>nd</sup> Additional Senior Civil Judge

Morbi.

U. I. C. No. GJ-01099

*mhm/-*