



## **Regular Civil Suit No. 37 of 2020**

### **Order Below Ex.5**

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[1] The plaintiff has filed this present suit for cancellation of sale-deed, declaration and permanent injunction against the defendant and presented this application vide Ex. 5 for temporary injunction. The brief facts of this application are as under;

that the plaintiff is in need of money and the defendant has agreed to give loan of Rs. 30,00,000/-(rupees thirty lakh only) to the plaintiff on condition to execute registered sale-deed of his land for security. Hence, the registered sale deed no. 1123 of land bearing survey no.87/1 ad-measuring 2224 Sq.meter (herein after referred as disputed suit property) was executed on 24/06/2020 in the favor of the defendant by the plaintiff. Further, another compromise agreement was entered into between them on the same day accordingly to which the defendant has given cheque no. 132446 of Rs. 5,00,000/-(rupees five lakhs only) and cheque no. 963062 of Rs. 25,00,000/-(rupees twenty five lakhs only) to the plaintiff and it was agreed that the loan of Rs. 30,00,000/-(rupees thirty lakhs only) was taken till 24/06/2022 and the registered sale-deed is valid only if the aforesaid cheques were honored. If the cheques were bounced for any reason than the sale-deed will be canceled. It was further agreed that cash amount of Rs. 10,00,000/-(rupees ten lakhs only) was shown only for the purpose of the sale-deed and no such amount was received by the plaintiff and he will not be responsible for that and the plaintiff has only taken Rs. 30,00,000/-(rupees thirty lakhs only) from the defendant. It is further stated that the possession of the disputed suit property was not given to the defendant for reason mentioned in the compromise agreement. The signature and photo of the defendant in the registered sale-deed and the compromise agreement is same. It is also stated that only cheque of Rs. 5,00,000/-(rupees five lakhs only) was cleared and the amount



was received by the plaintiff. But, the cheque of Rs. 25,00,000/- (rupees twenty five lakhs only) was dis-honored on 01/07/2020 due to inoperative account. Hence, the defendant has breached the terms and conditions of compromise agreement. It is further stated that disputed suit property cannot be sold as the same was included in the road. It is also stated that the Non-agricultural land cannot be divided into sub-plots and cannot be sold separately without permission of the appropriate authority. Hence, the registered sale-deed of disputed suit property is barred in the eyes of law. It is also stated that the disputed suit property was acquired by the government and therefore same cannot be sold by way of registered sale-deed. The registered sale-deed was executed only for the purpose of security of money which was given by the defendant to the plaintiff. The defendant has breached the condition of the compromise agreement and therefore the registered sale-deed is not valid and the same is liable to be set aside. The defendant is trying to misuse the sale-deed and trying to enter in the disputed suit property illegally. The defendant has no right to take possession and make construction thereon. Hence, one notice was given to the defendant on 30/07/2020 which was served upon him to cancel the sale-deed but he has not given any reply. Hence, the cause of action arose to file this suit. The plaintiff has prima facie case and balance of convenience in his favor because the defendant has breached the terms and conditions of the compromise agreement and the defendant has fraudulent intention. The plaintiff has to suffer irreparable loss if temporary injunction will not be granted in his favor. Hence prayed for relief as claimed in the paragraph 5 of the present application.

[2] Accordingly, the notice has been issued to the defendant which was accordingly served. But, he failed to remain present before this Court either



personally or through Ld. Advocate. Hence, his right to produce reply of the present application was closed.

- [3] In support of the case, the plaintiff has produced the documentary evidence vide list of exhibit 3 which will be discussed at appropriate place to avoid repetition.
- [4] Thereafter, the Ld. Advocate of plaintiff has advanced oral arguments in support of his case and stated that both the registered sale-deed and the compromise agreement are produced on the record of the case along with the copy of the cheque and return memo. It is apparently clear that the defendant has breached the condition of the compromise agreement as the cheque of Rs. 25,00,000/- was dishonored. Therefore, the registered sale-deed is not valid as consideration was not paid to the plaintiff. He has further argued that the registered sale-deed was executed only for the purpose of the security of the amount which was taken from the defendant as loan. He has further argued that the defendant even failed to appear before this Court and he has not produced any reply of the present application which shows that the defendant has malafide intention. He has relied upon the judgment of *Rajiv Saluja V. Bhartia Industries Limited*, LAWS(DLH) 2002 5 69 in support of his argument and prayed for allowing the present application.
- [5] For deciding the present application of plaintiff, following are the point of determination:
1. Whether the plaintiff proves that plaintiff has prima facie case in his favor?
  2. Whether the Plaintiff proves that Balance of convenience is in his favor?



3. Whether the plaintiff proves that if interim injunction will be refused then plaintiff have to suffer irreparable injury which cannot be compensated in terms of money?

4. What order?

**Finding :**

1. Issue no. 1 in negative.
2. Issue no. 2 in negative.
3. Issue no. 3 in negative.
4. As per final order.

**-:: REASONS ::-**

[6] As all the points of determination are co-related with each other, for the sake of convenience and to avoid repetition, all points of determination are hereby discussed jointly.

[7.] Before deciding the factual aspects of the present application, looking to the documentary evidences produced by the plaintiff vide exhibit 3, the copy of conversion of disputed suit property to non-agricultural land is produced vide mark 3/1. Thereafter, the plaintiff has produced copy of plan vide mark 3/2. Thereafter, the plaintiff has produced copy of registered sale-deed no. 1123 vide mark 3/3. Perusing the registered sale-deed, it appears that the fact of sale of disputed property was mentioned in it for consideration of Rs. 15,00,000/- (rupees fifteen lakh only) and it is also mentioned that the payment of Rs. 10,00,000/- (rupees ten lakh only) is made in cash and remaining payment of Rs. 5,00,000/- (rupees five lakh only) is made through cheque no. 132446. Further, the fact of transfer of possession is also mentioned in it along with ownership and other rights in the favor of the defendant. The photographs of property are also attached with it



and it is duly registered on 24/06/2020. Thereafter, the plaintiff has also produced the copy of compromise agreement vide mark 3/4 which is neither registered nor notarized. But, it is written on the simple paper dated 24/06/2020 in which it is mentioned that the plaintiff has executed the sale-deed for the period of two years and taken Rs. 30,00,000/-(rupees thirty lakh only) from the defendant through two cheques worth Rs. 5,00,000/-(rupees five lakh only) and Rs. 25,00,000/-(rupees twenty five lakh only). It is also mentioned in the agreement that if the cheque were bounced than sale-deed became canceled. Thereafter, the plaintiff has produced mutation form no. 6 vide mark 3/5 & 3/9 and copies of other sale-deed vide mark 3/6 to 3/8. The plaintiff has also produced the copy of cheque of Rs. 25,00,000/- (rupees twenty five lakh only) along with it's return memo vide mark 3/10 & 3/11 and the copy of notice and acknowledgment receipt vide mark 3/12 & 3/13.

[8] Perusing the factual aspect of the case, the plaintiff has alleged that he has taken loan of Rs. 30,00,000/-(rupees thirty lakh only) from the defendant and the registered sale-deed of disputed suit property was executed for security of the loan amount. But, perusing the sale-deed, no such fact is mentioned in it. The sale-deed shows the intention of the parties to sale-purchase the property for due consideration which had the effect of the transfer of ownership and possession along with other consequential rights. Moreover, the sale consideration was also shown different from the submission of the plaintiff. The plaintiff has relied upon the compromise agreement but the same was neither registered nor notarized. The sale-consideration mentioned in the sale-deed is not in dispute because there is nothing mentioned in the sale-deed about the cheque of Rs. 25,00,000/-(rupees twenty five lakh only). The Law prescribes the procedure and provision for every transaction and the same is required to be followed to get protected in case of dispute. In the present case also, if the plaintiff is willing to put his land for security than there is relevant provision for mortgage in transfer of property Act.



But, no one is supposed to misuse the law like in the present case where terms and conditions of the sale-deed and compromise agreement are not in consonance in any manner. At this juncture, the registered sale-deed has recognition because the same is executed as per law of the land under the provision of Indian Registration Act and the compromise agreement cannot be relied upon without appreciating evidence. At this juncture, there is no dispute with regard to payment of sale-consideration as mentioned in the sale-deed. Further, there is no evidence on the record of the case showing that the disputed suit property was acquired by the government for road. If the plaintiff was aware about the aforesaid fact than why he has executed the sale-deed of the land which he has no right to sell. It is the settled principle of law that one who comes to the Court, must come with the clean hands. But, in the present case, the plaintiff himself has alleged that he had no right to sell the disputed suit property because the same was acquired for road even though he has executed the sale-deed for the same. Hence, it appears that the plaintiff has not come before the court with clean hands. Therefore, the plaintiff has no prima facie case at this juncture and balance of convenience does not lies in his favor. Further, the defendant has to suffer irreparable loss if the temporary injunction will be granted against him. Therefore, this Court hereby passed following order in the interest of justice:

#### O R D E R

1. The present temporary injunction application is hereby rejected.
2. Cost will follow the final order.

Pronounced in open Court today on 12th July, 2021 under my seal and signature.

Place: Wankaner  
Date: 12/07/2021

Aatmadeep Sharma  
2<sup>nd</sup> Addi. Civil Judge,  
Wankaner.  
UI Code: GJ01355