

Order below Exhibit-5

1. The plaintiff has preferred this application seeking order of status quo against the defendant and in favour of the plaintiff.
2. The present suit has been instituted by the plaintiff against defendant seeking decree of declaration, permanent injunction and cancellation of registered sale deed. In this suit the plaintiff has prayed cancellation of registered sale deed bearing Reg. Sr. No.719 of 2023 dated 15.03.2023 (**hereinafter referred as 'registered Sale deed'**) executed by the plaintiff in favour of the defendant for the agricultural land bearing R.S. no.92/2 paiki 1/paiki 2 of moje Village Hamirpar, Taluka Tankara & District Morbi (**hereinafter referred as 'suit property'**) and also prayed declaration that the defendant has no right to do to any transaction in respect of the suit property and also prayed permanent injunction against defendant.
3. Along with the suit, Plaintiff has filed this application and has prayed to pass status quo order in favour of the plaintiff and in against of the defendant in respect of the suit property.
4. Summons and notices were duly served to Defendant.

The Defendant appeared through his Ld. Advocate before this court and have filed his consolidated reply cum written statement vide Exh-11. In the reply cum written statement filed by the defendant, he has prayed to reject the suit as well as injunction application on various grounds.

5. The Plaintiff has also preferred to file counter affidavit vide Exh-14 against the reply cum written statement filed by the defendant vide Exh-11. In this counter affidavit the plaintiff has denied the version of facts presented by the defendant in his reply cum written statement.
6. The Plaintiff has filed document vide mark-3/01 to 3/04. The Defendant has produced documents vide mark-12/01 to 12/10.
7. The oral arguments advanced by the L.A. Mr. S. H. Pandit for plaintiff and L.A. Mr.A.H.Joshi for the defendant were heard at length.
8. This is an application for temporary injunction and there are three basic principles for granting or refusing temporary injunction. The said principles are:
 - (i) Prima facie case in favour of the party seeking injunction,
 - (ii) Balance of convenience in favour of such person

and last;

(iii) There must be irreparable loss which is likely to be caused to party if injunction is not granted to such person.

An injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of equity and the peculiar facts and circumstances of the case. Apart from these three basic principles, the court is also required to see the conduct of party seeking equitable relief of temporary injunction.

9. Before entering in further discussion on merits, this court humbly believes that it is much worthy to have a look at observation of the Hon'ble Apex court in **Shiv Kumar Chadha ETC v. Municipal Corporation of Delhi, 1993 SCC (3) 161**, in which the Hon'ble Apex court observed that 'a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit.' Thus, it

is clear that grant of injunction is within the discretion of the court and a party is not entitled to an order of injunction as a matter of right.

10. In this matter, it appears that the main contention of the Plaintiff is that the suit property is sold by the plaintiff to the defendant by executing registered sale deed in favour of the defendant in consideration of Rs. 17 Lakhs. Thereafter, as the defendant no longer wanted suit property, the plaintiff had returned consideration amount of Rs. 17 Lakhs to the defendant vide cheque bearing no.000468 and this amount was received by the defendant. The defendant had promised plaintiff to cancel registered sale deed of the suit property in favour of the plaintiff. However, the defendant has not acted as per his promise and not canceled registered sale deed of the suit property and therefore the plaintiff has filed this suit with prayers more particularly described in para 11 of the plaint. It is submissions of the plaintiff that the plaintiff has returned the consideration amount as per the sale deed and the defendant has not produced any evidence regarding payment of any amount in cash to the plaintiff as claimed by the defendant in written statement and therefore if this application is not allowed multiplicity of proceedings will arise and therefore the plaintiff prayed to grant this application on

hand.

- 11.** On the other hand, the defendant has prayed to reject the suit as well as injunction application on various grounds in their reply cum written statement filed at Exh-11. The Defendant has submitted that the transaction of sale of suit property was of Rs. 49 Lakhs and not of only Rs. 17 Lakhs as stated by the plaintiff. Further the defendant submitted that due to dispute of part possession of suit property the plaintiff had returned the part consideration amount of Rs. 17 Lakhs to the defendant. After the dispute of part possession of suit property was resolved the defendant had issued cheque bearing no.106203 of Rs. 17 Lakhs in favour of the plaintiff which was dishonoured due to fault on part of plaintiff. It is submission of the defendant that the defendant was never agreed to cancel the registered sale deed and the plaintiff has not given any legal notice to the defendant & not challenged the revenue proceedings and the plaintiff has no prima facie case and therefore this application is required to be rejected.
- 12.** Looking to the plaint, application for temporary injunction, written statement cum reply, counter affidavit, the documents filed by the parties and the arguments advanced by the Ld. Advocates for both the

sides, it is clear that registered sale deed for the suit property was executed by the plaintiff in favour of the defendant and possession of the suit property is with the defendant and it is clear that currently name of the defendant is running in the revenue records of the suit property. As per **Section-135J of the Gujarat Land Revenue Code**, the entries in records of right and entry in register of mutation are presumed to be true unless contrary is proved or a new entry is lawfully substituted.

13. Furthermore, it is submitted by the plaintiff that the defendant no longer wanted suit property and therefore the plaintiff returned the consideration amount to the defendant. However, except bare averments, the plaintiff has not submitted any cogent proof regarding this facts. It is clear that the plaintiff has paid Rs. 17 Lakhs to the defendant but it is not clear that both the party were agreed to return the suit property to the plaintiff and this amount of Rs. 17 Lakhs was paid for cancellation of registered sale deed. It is submitted by the defendant that this amount was paid to the defendant due to dispute of possession of part suit property.
14. Injunction being an equitable relief, to succeed in this application, first of all the Plaintiff should establish his prima facie case and in this case

plaintiff has not produced any cogent evidence in support of his versions of facts and submission of both the sides are contrary to each other. Now, whether the plaintiff & defendant were agreed to cancel the registered sale deed of the suit property or not? whether the defendant no longer wanted suit property and therefore the plaintiff returned the consideration amount to the defendant or not? whether amount paid by the plaintiff to the defendant was paid for cancellation of registered sale deed of the suit property or not? Whether amount was paid by the plaintiff to the defendant due to dispute of possession of part suit property or not? are all the questions which can only be ascertained after taking thorough evidence on record and which can not be decided at this interim stage. Furthermore, evidences produced by both sides to support their claims are not conclusive enough and thereby they do not deserve to get any decision of this court at this juncture of deciding this application, except the decision which follows hereby. Therefore, in view of the aforesaid discussion of law and facts of this suit, it transpires to this court that the plaintiff has failed to establish prima facie case in his favour and against the defendant.

- 15.** There are lacunas in the claim of the Plaintiff and whatever is produced or submitted are not at all

conclusive or cogent enough to be relied upon. Therefore, in view of the aforesaid discussion of law and facts, it transpires to this court that the plaintiff has failed to establish prima facie case in his favour and against the defendant. Prima facie case is the first, basic and the most important ingredient to grant the application on hand. And it is well settled law that a person is not entitled to equitable remedy of temporary injunction even if balance of convenience and irreparable loss is in his favour if he fails to establish prima facie case. In **Kashi Math Samsthan v. Srimad Sudhindra Thirtha Swamy, AIR 2010 SUPREME COURT 296**, the Hon'ble court observed that '13. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour

and would suffer irreparable loss and injury if no injunction order is granted.' So, there is no need to consider aspect of balance of convenience and irreparable injury further. Therefore, the Plaintiff is not entitle to get any kind of relief under the gist of this application at this stage and therefore the Plaintiff do not deserve to get any decision of this court at this juncture, except the decision which follows hereby.

- 16.** Therefore, in view of the aforesaid reasons, this court declines to grant an application for temporary injunction filed by the plaintiff and any other possible reliefs under this application. Thus, considering all above aspects, following order is passed in the interest of justice.

O R D E R

This application is hereby rejected.

Cost will follow the suit cost.

Pronounced today on this 28th day of January, 2025.

Date:28/01/2025

Place:Tankara

S.G. Sheikh
Principal Civil Judge,
Tankara

Code: GJ01615