

ORDER BELOW EX. 5 IN SP.C.S. NO. 11 OF 2015.

1. The plaintiff has filed suit for declaration & permanent injunction against the defendant and along with this suit, he has filed present application under O.39, R.1 & 2 of C.P.C. for ad-interim injunction in respect of the suit land against the defendant. The brief facts of this application are as under.

The plaintiff presently resides at Rajkot, the defendant resides at Ranavav. The defendant is the owner and possessor of his agricultural land bearing Survey No. 16 paiki 1 measuring H.0-60-70 situated at village Vinzarana of Porbandar District & Taluka. It is the say of plaintiff that he decided to purchase the suit land from defendant in consideration of Rs. 7,50,0000/- and the defendant has executed an agreement to sell on 7/2/2014 on the stamp paper of Rs.100/- signed by both parties in presence of two witnesses in favour of plaintiff accepting amount of Rs.4,32,000/- from plaintiff. The plaintiff further says that the defendant has to execute a Registered Sale Deed in respect of the suit land up to 7/1/2015. The plaintiff further says that he has many times requested the defendant to execute Registered Sale Deed accepting remaining amount, but the defendant did not respond him as he is ready and willing to perform the part of his contract, but the defendant did not. The plaintiff further says that if the defendant will dispose of the suit land in any way to any body, he will suffer irreparable injury and will suffer great hardship, which cannot be compensated in terms of money, therefore, the plaintiff has prima facie case and balance of convenience are in favour of the plaintiff and prayed to allow this application.

2. After serving the summons of this suit and application upon the defendant, he has filed his written statement at Ex. 14, wherein he contends that no provision of Specific Relief Act is followed in the plaintiff's suit and further contends that the suit of plaintiff is barred by suppression of material facts, limitation and non joinder of parties as

well as this court has no jurisdiction to try this suit. The defendant contends that earlier, the plaintiff has financial transaction of some amount with his relative Dhansukhlal V. Mandaliya, goldsmith and by virtue of it, the plaintiff was demanding the said amount and just to save that relation with Mr. Dhansukhlal V. Mandaliya, the said agreement is executed, but no any sale transaction is taken place between the plaintiff and him. The defendant further contends that as per the agreement that as soon as he would recover the said amount from Mr. Dhansukhlal V. Mandaliya, the cancellation document shall be executed in his favour. The defendant further contends that at the time of execution of the document, the price of land was Rs. 10/- to Rs. 12/- lac per vighas as his said land is irrigated land and he was not in need of selling his land, he has not received any amount from the plaintiff nor the plaintiff has paid him any amount. The defendant further contends that the plaintiff is not agriculturist and cannot purchase such agricultural land and further contends that to grab his suit land, the plaintiff has executed said document forged and without consideration, therefore, the plaintiff has no prima facie case & balance of convenience is also not in his favour and if this application is allowed, he will suffer irreparable legal injury and prayed to dismiss the application with cost.

3. The following points arise to decide present application.

P O I N T S

- (1) Whether plaintiff proves her prima facie case ?
- (2) Whether plaintiff proves that the balance of convergence is in her favour ?
- (3) Whether plaintiff proves that if this application is rejected, she will suffer irreparable legal injury ?
- (4) What order ?

4. My finding to the above points are as under.

- (1) In the affirmative.

- (2) In the affirmative
- (3) In the affirmative.
- (4) As per final order.

REASONS

5. To prove this application, the plaintiff has produced following documents.

No.	Particulars of documents.	Marks
1.	Xerox copy of Agreement to sell.	4/1
2.	Xerox copies of Revenue Record.	4/2 to 4/4
3.	Xerox copy of A.D. Slip.	4/5
4.	Xerox copy of Regd. legal notice.	4/6
5.	Xerox copies of Regd. A.D. Slips.	4/7 to 4/9

The defendant has produced following documents on record.

No.	Particulars of documents.	Marks
1.	Xerox copy of Revenue Record.	16/1 to 16/2

6. I have heard the arguments of both sides, they have argued according to their respective case and prayed according to their prayer, so, I do not repeat the same.

7. **Points Nos. 1 to 3 :-**

I have heard the arguments of L.A. of the parties. I have also gone through the pleadings of parties, documents and provisions of O. 39, R. 1 & 2 of C.P.C.

Mark 4/1 is a xerox copy of notarized agreement to sell of defendant's land bearing Survey No. 16 paiki 1, H. Are 0-60-70 situated at village Vinzrana of Porbandar Taluka & District executed by the defendant in favour of the plaintiff on 07/02/2014. Perusing Mark 4/1, it clearly appears in para 1 & 2 that the defendant has agreed to sell his suit land to plaintiff with consideration of Rs.2,00,000/- per vigha and in respect of suit land, the plaintiff has paid Rs. 4,32,000/- to the defendant and the defendant has executed said agreement to sell

of his land for the total consideration of Rs.7,50,000/-. It is also held that the duration of 11 months was fixed and the said duration was going to be expired on 7/1/2015. It clearly proves that the defendant has made such sale transaction of his land with the plaintiff. Perusing this document, it clearly appears that both parties have put their respective signatures on each pages and this document is notarized on 7/2/14.

Looking to Mark 4/2 to Mark 4/4, Revenue Record produced by plaintiff, show that defendant is the owner & possessor of suit land, consequently, he has executed agreement to sell. It also appears from Mark 4/6, legal notice issued by plaintiff to the defendant shows that the plaintiff was ready and willing to perform his part of contract, but the defendant did not ready for the same. Perusing this whole document, there is no reference of name of Mr. Dhansukhlal Mandalia also as per story of defendant in his W.S. Ex. 14. So far as the legal aspect is concerned, the provisions of O. 39, R. 1 & 2 are applicable to the case of plaintiff, resultant, the plaintiff has prima facie case and balance of convenience is in his favour and if this application is rejected, the plaintiff will suffer irreparable legal injury, thus, the plaintiff succeeds to prove above points No. 1 to 3 by documentary evidence and for point No. 4, following order is passed in the interest of justice.

ORDER

- (1) The present ad-interim injunction application is allowed.
- (2) Both parties are hereby directed and ordered to maintain status quo position of the suit land as described in para 5(1) of the application till final decision of this suit.
- (3) No order as to cost of this application.

Pronounced in open court today this 5th day of August, 2016.

Date : 05/08/2016.
Porbandar.

(Nilesh Ashokbhai Ejner)

GJ-00484
Principal Senior Civil Judge

Porbandar.

Ex.

SPECIAL CIVIL SUIT No. 11 of of 2015.

:: I S S U E S ::

1. Whether plaintiff proves that the defendant is the owner and possessor of the suit land and has executed an agreement to sell in his favour in respect of agricultural land as alleged ?
2. Whether plaintiff proves that he is ready and willing to perform his part of contract took place between him and defendant ?
3. Whether defendant proves that the plaintiff has created and forged the said agreement to sell in respect of his alleged land ?
4. Whether defendant proves that to preserve the relations between plaintiff and Mr. Dhansukhlal V. Mandalia, the agreement to sell for his land is executed ?
5. Whether defendant proves that the suit of plaintiff is barred by non joinder of parties, limitation and jurisdiction of this court ?
6. Whether plaintiff is entitled to get any relief as claimed ?
7. What order and decree ?

Date : 05/08/2016.

Porbandar.

(Nilesh Ashokbhai Ejner)
Principal Senior Civil Judge
Porbandar.