

**SPECIAL CIVIL SUIT No.24/2018.**

**COMMON ORDER BELOW EXHS.5 & 40:**

**1.** By the application at Exh.5, the plaintiff has prayed for temporary injunction under Order 39 Rule 1 and 2 of the Civil Procedure Code, 1908, against the defendants. The plaintiff has also moved the application at Exh.40 of similar nature, in view of the subsequent transaction that took place during the pendency of the application Exh.5, in respect of the suit-land.

**2.** I have taken into consideration the Written Submissions filed by the learned advocate for the plaintiff, at Exh.52. I have heard the oral submissions of Mr.J.N.Hathila, learned advocate for the defendant No.1. I have also heard the oral submissions of Mr.A.R.Dave, learned advocate for the defendant Nos. 2 to 4. I have gone through the record of this case.

**3.** The plaintiff is the uncle of the defendant No.1. According to the plaintiff, the ancestral property of the plaintiff and the defendant No.1, which includes the suit-land, is an undivided property, no partition has taken place between them. According to the plaintiff, the defendant No.1 has executed the Will in favour of the plaintiff, whereby the defendant No.1 intended to transfer the suit-land in favour of the plaintiff. Thereafter, the defendant No.1 has sold the suit-land to the defendant No.2, by the registered sale-deed No.6209/2018, dated 06.10.2018, which is impugned in the present suit. As per the say of the plaintiff-himself, the defendant No.1 has sold his share (share of the defendant No.1) to the defendant No.2, by the impugned sale-deed. The claim of the plaintiff is founded on the Will executed by the defendant no.1 in favour of the plaintiff. As per the provisions of the Indian Succession Act, the Will shall take effect only after the death of the will-maker, but in the instant case, the defendant No.1 i.e. the Will-maker is alive. Moreover, the Will is merely a wish of the person, and the Will by itself does

not create or transfer any right in favour of the plaintiff. Thus, in my opinion, at this interlocutory stage, the plaintiff has no *prima facie* case in his favour to get the temporary injunction, as prayed for in the application Exh.5.

4. But, so far as the application at Exh.40 is concerned, the said application, in my opinion, deserves to be partly allowed for the reasons stated hereinafter. It appears from the pleadings of the plaintiff that the defendant no.1, immediately after the execution of the impugned sale-deed, had gone missing, and later on, the defendant No.1 has given a written complaint to the Taluka Police Station regarding his abduction, against the defendant No.2 and three others. Moreover, it further appears from the record that the present suit has been filed in the year 2018 and the defendant No.2 was well-aware that no any *interim* injunction has been granted by the Court below the application Exh.5. Therefore, taking advantage of this situation, the defendant No.2 has entered into an agreement for sale in respect of the suit-land in favour of the defendant Nos.3 & 4 (who have been subsequently joined as the party-defendants in the present suit upon the application of the plaintiff). The said agreement for sale has been registered with the Sub-Registrar, Godhra, at Serial No.883/2021 on 01.02.2021. The defendant No.2 has also executed an irrevocable power of attorney in favour of the defendant Nos.3 & 4 in respect of the suit-land. The said irrevocable power of attorney has been registered with the Sub-Registrar, Godhra at Serial No.960/2021 on dated 03.02.2021. Both these documents have been produced by the plaintiff at Mark 39/1 & 39/2. Thus, all these circumstances on record smack of *mala fides* on the part of the the defendant Nos.2 to 4 to damage the rights of the plaintiff relating to the suit-land, which are *sub judice* in the present suit. Thus, since the relief of temporary injunction is a discretionary relief, considering the facts and circumstances on record, I consider it appropriate to restrain the defendant

Nos.2 to 4 from entering into any further transactions in respect of the suit-land till the hearing and final decision of the present suit. Moreover, if the defendant Nos.2 to 4 are restrained by way of temporary injunction, in that event, no prejudice is going to be caused to the defendant Nos.2 to 4, and besides, it will prevent the multiplicity of proceedings. Hence, in conclusion, I pass the following final order:

**:: FINAL ORDER ::**

1. The application **Exh.5** is hereby **dismissed**.
2. The application at **Exh.40** is hereby **partly allowed**.
3. The defendant Nos.2 to 4 are hereby restrained by way of this temporary injunction from entering into any transaction with any third person or party in respect of the suit-land on the basis of the impugned sale-deed and also on the basis of the agreement for sale, produced at Mark 39/1, and irrevocable power of attorney, produced at Mark 39/2, till the hearing and final decision of this suit.
4. No order as to costs.

Read and pronounced in the open Court on this 20th day of October, 2023.

Place: Godhra.

Date : 20-10-2023.

**(Hitesh Jayantilal Tanna)**  
Chief Judicial Magistrate & Additional  
Senior Civil Judge, Godhra, Dist.  
Panchmahals.  
Judge Code - GJ00955.

*\*J.P.Trivedi, Eng. Steno. + Self.*