

**GJPM040027232024**



**REGULAR CIVIL SUIT No.86 OF 2024**

**ORDER BELOW EXH.5**

1. The plaintiff has preferred present application under Order 39 Rule 1 and 2 read with Section 151 of the Civil Procedure Code for interim injunction against the defendants.
  
- 2 Main crux of the present application is that :

As per agreement to sale No.3086/2024 dated 26.09.2011 it is decided between the plaintiff and the defendant Nos.1 to 4 that after payment of total Rs.9,00,000/- to the defendant Nos.1 to 4 plaintiff has purchased land bearing R.S. No.171 of A/c No.86 admeasuring 0-79-93 Hec.Are.Sqr.Mtrs Akar Rs.2.50/-. The four boundaries of the said land is as under :

- |       |   |   |
|-------|---|---|
| East  | : | Lands of R.S. No.172 and boundaries of Vintoj Village are situated. |
| West  | : | Boundaries of Vintoj Village are situated.                          |
| North | : | Boundaries of Survey Nos.170 and 172 are situated.                  |
| South | : | Boundaries of Vintoj Village are situated.                          |

The said land hereinafter referred as “suit land/suit property”. For implementation of above agreement to sale plaintiff has paid Rs.1,00,000/- as an amount of earnest money to the defendant Nos.1 to 4 and get absolute and peaceful possession of the suit land at the spot. Since then the plaintiff has in absolute and peaceful possession of the suit land. As per said agreement to sale it is decided between the plaintiff and the defendant Nos.1 to 4 that after converting suit land from new tenure to old tenure and after getting remaining consideration amount defendant Nos.1 to 4 shall have to execute register sale deed in favour of the plaintiff. Thus, it appears that plaintiff has paid total Rs.1,00,000/- to the defendant Nos.1 to 4 instead of implementation of so called agreement to sale. After passing some time plaintiff told the defendant Nos.1 to 4 to convert the suit land from new tenure to old tenure and execute the sale deed but the defendant Nos.1 to 3 and 4/1 to 4/3 have not convert the suit land from new tenure to old tenure and not executed the sale deed and sold out the suit land to the defendant No.5 vide registered sale deed No.3086/2024 dated 15.05.2024 executed before the Sub-Registrar, Halol and committed cheating with the plaintiff and not followed the terms and condition of agreement to sale No.3086/2024 dated 26.09.2011. Thereafter, plaintiff came to know about this fact so plaintiff ask the defendant Nos.1 to 3 and 4/1 to 4/3 and they have threatened the plaintiff to do whatever you want to do.

Therefore, plaintiff has filed present suit along with present interim injunction application, whereby, plaintiff has seeking reliefs to restrain the defendant Nos.1 to 3 and 4/1 to 4/3 not to sale, gift, transfer and mortgage suit land to any person or any organization and also restrain the defendant Nos.1 to 3 and 4/1 to 4/3 not to create any type of encumbrance over the suit land and also restrain them not to do any change in revenue record of the suit land and not to do any type of activity except agriculture.

3. In response to the notice issued by this Court the defendant No.5 has appeared before this Court and submitted her written reply vide Exh.8, whereby, she has contended that all the facts of present application are false and fabricated and plaintiff has to prove all facts of present application by producing cogent documentary evidences. It is contended that the plaintiff has filed the present interim injunction application with malafide intention by suppressing material facts. So, the present interim injunction application of the plaintiff is required to be reject. It is further contended that plaintiff has stated false four boundaries of the suit land. It is further contended that in fact defendant No.5 has purchased the suit land from the defendant Nos.1 to 4 after payment of consideration amount of Rs.10,39,000/- vide registered sale deed No.3086/2024 dated 15.05.2024 and since then defendant No.5 has holding actual and peaceful possession of the suit land. The present suit of the plaintiff is out of limitation because the so called

agreement to sale is executed on date 26.09.2011. Plaintiff has not come before the Court with clean hands. Plaintiff has not joined the Revenue Officials, Parvatbhai Bakorbhai and Sureshkumar Kalidas Rajput to the present suit so the present suit of the plaintiff is also barred by non-joinder of necessary parties. Plaintiff has not filed the suit for implementation of the agreement to sale within time limit. Registered sale deed is prima facie more important than the agreement to sale. Plaintiff is not entitled to get any reliefs as prayed in present interim injunction application. Plaintiff has not followed the terms of so called agreement to sale. As per Section 17(1) (B) of the Registration Act it is mandatory to registered the so called agreement to sale, and if it is not so, as per Section 49 of Registration Act that document cannot be considered as evidence. Defendant has relied on the Judgment of *Sukhvinder Kaur V/s Amarjit Singh and Ors reported in AIR 20012 P&H 97*. Lastly, defendant No.5 has requested to reject the present interim injunction application by awarding her compensatory cost.

4. Thereafter, defendant Nos.1 to 3 and 4/1 to 4/3 have filed their written reply at Exh.10, wherein, they have repeated the same contents of written reply of defendant No.5 at Exh.8, hence, to avoid repetition of facts they are not repeated here.
5. Further, defendant Nos.1 to 3, 4/1 to 4/3 and 5 have filed their separate written arguments at Exh.13 and Exh.\_\_\_\_,

wherein, they have repeated the same contents of their written reply at Exh.8 and Exh.10, hence, to avoid repetition of facts they are not repeated here.

6. After perusing record of the suit following issues are arise before this Court just and proper adjudication of present application.

7. **ISSUES**

(1) Whether the plaintiff proves that he has a prima facie case ?

(2) Whether the plaintiff proves that balance of convenience is weighing in his favour ?

(3) Whether plaintiff proves that if injunction as prayed is not granted then he will suffer an irreparable loss which cannot be compensated in the terms of money ?

(4) What order ?

8. My reply for above issues are as under :

1. In the negative.

2. In the negative.

3. In the negative.

4. As per final order.

**:- REASONS :-**

9. Present application of the plaintiff is for interim injunction as envisaged under Order 39 Rule 1 and 2 of CPC, 1908 (CPC for short). It is an undisputed fact that to

obtain interim injunction the plaintiff should have to prove his prima facie case, balance of convenience and irreparable loss which cannot be termed as a compensation of money. In all, while plaintiff proves all these three ingredients in his favour then the plaintiff may entitled to get interim injunction in his favour.

So, it is a case of the plaintiff that the plaintiff was entered into agreement to sale dated 26.09.2011 with the defendant Nos.1 to 4 for a suit property for a sum of Rs.9,00,000/- and the plaintiff has paid Rs.1,00,000/- as a advance consideration and rest of the amount was to be paid on execution of registered sale deed. Further, the plaintiff has plead that, especially in para 2 of the plaint that on the day of execution of agreement to sale the defendant Nos.1 to 4 have handed over actual possession of the suit property to the plaintiff. So, it appears from above that the plaintiff and the defendant Nos.1 to 4 were entered into an agreement to sale in the year 2011 and the defendant Nos.1 to 4 have handed over actual possession of the suit property to the plaintiff. In this regard, it would be imperative to gone through an agreement to sale which is submitted by the plaintiff vide Mark-3/1. Upon bare perusal of an agreement to sale it appears that, it is not registered in the office of the Sub-Registrar concerned but it is only notarized agreement. Further, it appears that in this agreement to sale the plaintiff is not sole purchaser but one another person namely Sureshkumar Kalidas Rajput was also purchaser and he was also party in

agreement to sale. However, this another person-purchaser Sureshkumar Kalidas Rajput is neither plaintiff nor defendant in a present suit. Moreover, it is also not case of the plaintiff that he has filed present suit on behalf of this Sureshkumar Kalidas Rajput. So, in all picture emerges that out of two purchasers only plaintiff has instituted present suit while another purchaser Sureshkumar Kalidas Rajput has not made any claim or not instituted any suit against the defendant. Furthermore, it appears from the heading of agreement to sale as discussed herein above it appears that there are two purchasers of the suit property, one is present plaintiff and another is Sureshkumar Kalidas Rajput. Under such circumstances, it is very much clear that the plaintiff would not be a sole purchaser therefore, plaintiff cannot made any claim solely on entire suit property. In other words plaintiff cannot claim for another except he may be authorized by such another person in writing.

- 10 Moreover, from para-4 of agreement to sale it appears that, the defendant Nos.1 to 4 were agreed to handover possession of the suit property to the plaintiff upon execution of registered sale deed only. Under such circumstances, claim of the plaintiff that the defendant Nos.1 to 4 have handed over actual possession of the suit property to the plaintiff is nothing but a false and wrong statement made by the plaintiff in the pleading. Even

otherwise if we believe version of the plaintiff to be true, then the plaintiff would be in possession for at least 13 years from the institution of the suit. So, the plaintiff requires to adduce any such documentary evidence which may lead this Court to believe that the plaintiff is in actual possession of the suit property since more than decade. However, the plaintiff is not in position to adduce any such document to show that the plaintiff is in possession of the suit property.

The plaintiff had by way of present claim prayed for specific performance of contract. For this purpose the plaintiff has obliged to show his readiness and willingness to perform his part of contract as envisaged u/s 16 of the Specific Relief Act. To prima faice prove readiness and willingness for performance of part of his contract the plaintiff has ought to have issued notice to the defendant, whereby, the plaintiff should have to state that he is ready and willing to perform his part of contract. But surprise even if left of one decade the plaintiff has not issued a single notice in written to the defendant to show his readiness and willingness. In this regard it would be imperative to gone through judgment rendered by the Hon'ble the High Court of Madras in case of **Pankajam Parthasarathy and 5 v. Kasturi Guna Singh**, wherein, it is observed that -

*31. In Koothapadayachi's case, 1998 (1) LW*

*301, this Court has held that factum of readiness and willingness of the plaintiff to perform his part of the contract has to be ascertained with reference to the contract of the party and the attending circumstances, and readiness and willingness from the date of agreement till the date of sale deed should be pleaded and proved and this Court held as under:-*

*"Under Section 16 of the Specific Relief Act, readiness and willingness from the date of agreement till the date of sale deed should be pleaded and proved. Xx xx xx "*

36. *The Supreme Court in Syed Dastagir's case, 1997 (7) Supreme 175 held that compliance of readiness and willingness has to be in spirit and substance and not in letter and form and the mechanical reproduction of exact words of Section cannot be insisted upon and the averment in the plaint that major portion of amount had already been paid and balance sale consideration was deposited on the date of filing suit would establish readiness and*

*willingness of the plaintiff as required in Section 16(c) of the Specific Relief Act. As already observed by me, this Court in Koothapadayachi's case, 1998 (1) LW 301 and in Vasantha's case, has held that the agreement holder should prove his readiness and willingness continuously from the date of agreement till the date of hearing.*

41. *This Court in Vasantha v. M. Senguttuvan, held that even if for a single day, plaintiff/agreement holder is not ready to take the sale deed, the equitable remedy should not be granted. Applying the ratio of the case, the plaintiff has not shown her readiness and willingness from 1978 to 1981 and even after the filing of the suit, when the Court, at the stage of granting interim injunction, directed her to deposit the balance of sale within the time granted which she failed and it clearly shows that the plaintiff did not have the necessary money to comply with the direction of the Court and she was not ready and willing to*

*perform her part of the contract. The order of the trial Court refusing to extend the time for deposit has become final. Further there is no evidence from the plaintiff that she was ready and willing to perform her part of agreement after the death of Chengammal till the date of the suit notice in the year 1981. However, in the plaint, the plaintiff has stated that she has demanded the defendants for the execution of sale deed informing that she was ready and willing to pay the balance of sale consideration and complete the sale transaction. The plaintiff has also not proved her statement that the defendants had promised her several times to complete the transaction but failed for the reasons best known to them. On the other hand, it is the case of the defendants that even after the death of Chengammal, the second defendant was demanding the plaintiff to complete the transaction, but the plaintiff was not ready to pay the balance of sale consideration and she*

*requested extension of time for payment. I hold that in a suit for specific performance, it is for plaintiff to establish his/her readiness and willingness from the date of agreement till the date of sale. In the instant case, the plaintiff has not established that she was ready and willing to perform her part of the contract. The plaintiff has also not established that she was running a handicraft business:she has not even stated the place of the business and what was the turnover from the business. It is relevant to notice that she has not examined any of the employees, nor did she produce any document to show that she was carrying on the handicraft business. Except her evidence, there is no independent evidence to show that her husband was an income-tax assessee and the plaintiff has not produced any document to show that her husband was an income-tax assessee. I hold that from the date the last payment of Rs.20,000 was made till the date of the suit, nearly for a*

*period of three years, the plaintiff has not established that she was ready and willing to perform her part of the contract and she was also not able to establish her readiness and willingness even after the institution of the suit. The fact that she gave different versions regarding her failure to deposit the money ordered to be deposited clearly shows that she has not come out with true facts.*

51. *In the circumstances, I hold that the plaintiff has set up a false regarding her readiness and willingness and it is a material consideration to consider the question whether the plaintiff is entitled to the relief of specific performance. I also hold that the fact that there is a change in the power of attorney holder does not make any difference. Even assuming and for which there is no evidence that the defendants have subsequently entered into an agreement for sale with the power of attorney holder of the legal heirs of K. Raghavachari, that will not entitle the*

*plaintiff to the relief of specific performance when there was a complete inaction on her part from 1978 to 1981 and during that period, she had not shown her readiness and willingness to perform her part of the agreement.*

*Further, the Hon'ble High Court of Madras has also observed in case of R. Rajaram v. T. R. Maheswaran that-*

*45. In Pukhraj D.Jain v. G.Gopalakrishna, (2004) 7 SCC 251, the Supreme Court held that not only should there be an averment in the plaint that the plaintiff was ready and willing to perform his part of the contract but surrounding circumstances must also indicate that the readiness and willingness continued from the date of contract till hearing the suit. The legal position was explained in the following words :-*

*"6.Section 16(c) of the Specific Relief Act lays down that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he*

*has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant. Explanation (ii) to this subsection provides that the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. The requirement of this provision is that the plaintiff must aver that he has always been ready and willing to perform the essential terms of the contract. Therefore, not only should there be such an averment in the plaint but the surrounding circumstances must also indicate that the readiness and willingness continue from the date of the contract till the hearing of the suit."*

53. *In Pushparani S. Sundaram v. Pauline Manomani James,(2002) 9 SCC 582, the readiness and willingness within the meaning of Section 16(c) of Specific Relief*

*Act, was considered by the Supreme Court and it was observed thus:-*

*"5. ... So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved."*

11. According to plaint of the plaintiff the plaintiff was entered into agreement to sale with the defendant Nos.1

to 4 on date 26.09.2011 while present suit is instituted on date 16.07.2024. So, it appears that the plaintiff has instituted present suit after 13 years from the date of execution of agreement to sale. In this regard it would be imperative to go through Article 58 of the Limitation Act, 1963 which provides three years limitation to obtain any other declaration when the right to sue first accrues. In a given case since the date of agreement to sale the plaintiff were well aware with the fact that he has only paid advance consideration money i.e. Rs.1,00,000/- and rest of money is required to be paid upon execution of registered sale deed. However, since a long period almost 13 years the plaintiff has not taken any care for execution of registered sale deed and payment of balance consideration.

12. The plaintiff has seeking declaration, perpetual injunction and other consequential reliefs at the end of his plaint. However, at this stage it would be profitable to go through proviso provided in Section 54 of Transfer of Property Act which is says that such kind of instrument does not create any right, title or interest into the property. So, it is very much clear that such kind of agreement to sale is nothing but promise to do something or abstain from doing something. Hence, such kind of agreement to sale does not create any right, title or interest into the suit property for the plaintiff.

13. Considering discussion made herein above I am of the considered view that the plaintiff does not have prima faice case. On the contrary the defendant No.5 who is purchased suit property under registered sale deed by following due process of law. Thus, in compare to each other I am of the opinion that balance of convenience is also lies in favour of the defendant No.5 and not in favour of the plaintiff. Under such circumstances, it is also transpires that such sale transaction is not of the nature that which cause irreparable loss to the plaintiff. Hence, I answer issue No.1 to 3 as in negative and for issue No.4 in the larger interest of justice I pass following final order ;

**: FINAL ORDER :**

1. The present interim injunction application of the plaintiff under Order 39 Rule 1 and 2 read with Section 151 of the Civil Procedure Code is hereby rejected.
2. No order as to cost.

Signed and pronounced today on this 13<sup>th</sup> day of May, 2026.

Date : 13.05.2026.  
Place : Halol.

[Rajeshkumar Batuklal Joshi]  
Principal Senior Civil Judge,  
Panchmahals at Halol.  
Judge Code : GJ00952