

REGULAR CIVIL SUIT NO. 79 of 2024

ORDER BELOW EXH.5 :-

- (1)** The plaintiff has preferred an ad-interim application under Order-39, Rule (1) and (2) and Section 151 of the Civil Procedure Code to obtain relief as prayed in para (5) of the interim injunction application filed by the plaintiff. The brief facts of the plaintiff's case are that the defendants are in ownership and possession of the suit property house situated at Jilla Garden Chowk, Ramnathpara, City Survey ward no.4, City Survey no.2958 paiki 34.69 square meter of land at Rajkot. The defendant no.2 had expressed his willingness to sell the suit property house to the plaintiff no.2. The value for the said property was decided to be Rs.8,00,000/-. The defendants had entered into an agreement to sell the house to the plaintiff before Notary Shri Jayant V. Gangani and registered with him by no.C-1017 on 4/3/2023. At the time of agreement the plaintiff had paid Rs.5,00,000/- by cheque no.218848 dt.30/1/23 of Central Bank of India, Jimkhana branch, Rajkot. The amount of the cheque was deposited in account of defendant no.2. Moreover Rs.50,000/- was paid in cash on 28/2/23. One of

the conditions of the agreement was that the balance amount of Rs.2,50,000/- would be paid by the plaintiff to the defendant within 90 days and the defendant no.2 had to pay loan borrowed by him from Infinity Fincop Solutions and sell the house to the plaintiff. The defendants have not paid loan with in 90 days thereby done breach of condition of agreement. The plaintiff had issued notice to the defendant on 18/12/23 through his learned advocate which is served upon the defendants. The defendants did not reply to the notice.

The plaintiff is ready and willing to perform conditions of the agreement but the defendant has breached the agreement. The defendant is not ready to execute the sale deed and he is trying to sell the property to someone else at higher price. Therefore the plaintiff has filed the present suit. The plaintiff has prayed for temporary injunction against the defendants as per para 12 of this application.

- (2)** The defendant no.1 has appeared through her learned advocate Mr.H.A.Sagathiya. But she has not filed any reply.
- (3)** The plaintiff has prayed for temporary injunction against the defendants as per para 12 of this application. Heard Ld. Advocate Mr.K.N.Mori for the plaintiff. No one has appeared

to argue on behalf of the defendants.

(4) The following issues arise for the determination of the present application :

1. Whether the plaintiff has prima-facie case?
2. Whether the balance of convenience is in favor of the plaintiff?
3. Whether the plaintiff proves that if the injunction is not granted in his favor then he will suffer irreparable loss which cannot be compensated in terms of money?
4. What order?

(5) My findings for the a fore stated issues are as follows :

1. In affirmative.
2. In affirmative.
3. In affirmative.
4. As per final order.

REASONS

(6) Issue no. 1 to 3 :-

6.1 As the above mentioned issues are interlinked with each other, to avoid repetition and for the sake of convenience, I discuss them simultaneously. Heard learned advocate for the plaintiff and perused the record.

6.2 The present plaintiff has produced documentary evidences to show his prima-facie case vide Mark 3/1 to 3/7. It is not disputed that the plaintiff and defendant had entered into an agreement to sell on 4/3/23(Mark-3/1). The plaintiff no.1 and the defendant no.1 are parties to the said agreement. In para no.2 of the agreement-Mark 3/1, details of payment such as cheque number, amount and date are mentioned. The defendant has not denied facts of this application. Mark 3/2 is copy of bank statement of plaintiff's account. Amount of Rs.five lacs is debited from his account on 31/1/23. The defendant no.2 is witness to the said agreement. Mark-3/4 is copy of notice issued to the defendant by the plaintiff on 18/12/23.

Looking to the record of the case, it is clear that the defendant no.1 had entered into registered agreement to sell the suit house to the plaintiff.

6.3 It is settled law that the grant of temporary injunction is discretionary relief. In order to enable a party to obtain temporary injunction he has to satisfy the following three conditions; first, there is prima facie case of the plaintiff, i.e.

there is an important question to be tried in the suit and that on facts before the court there is probability of his being successful in grant of relief asked for by him. Secondly, the court's interference is necessary to protect him from irreparable injury and thirdly that the comparative inconvenience which is likely to ensue from withholding the injunction will be greater than that which is likely to arise from granting it.

6.4 Looking to the present set of facts, it appears that the plaintiff had paid advance sum of Rs.5,50,000/- to the defendants. The defendants have pocketed it and not executing the sale deed to the plaintiff. The plaintiff has prima facie case. Meanwhile if the suit property is transferred by the defendant, it will give rise to multiplicity of proceedings and the plaintiff will suffer irreparable loss which cannot be compensated in terms of money as many a times a property becomes valuable due to its location and neighborhood too. When the defendant had willingly accepted the earnest money from the plaintiff, the right of plaintiff need to be protected as the plaintiff has filed the present suit with this application within period of limitation.

For the above stated reasons my reply for Issue no. 1, 2 and 3 is in affirmative and for Issue no. 4, I order as follows in the interest of justice:

: ORDER :

- 1.** The plaintiffs' application is hereby allowed. The defendants are restrained from transferring the suit property-house by any mode of transfer to third party other than plaintiff until final disposal of the present suit.

No order as to costs.

Pronounced in the open Court today on the 18th day of June, 2024.

Date :18/06/2024.
Rajkot.

(Sheetal Venkateson Mudaliar)
17th Additional Sr. Civil Judge, Rajkot
Code no. GJ01217.

