

GJSK030000872024



**In the Court of Principal Senior Civil Judge,
Sabarkantha @ Prantij**

Kiritbhai Mansukhbhai Mistri

...Plaintiff / Applicant

// Versus //

Heirs of deceased Natvarbhai Somabhai Patel & Ors.

...Defendant / Opponent

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Appearance :

Ld. Adv. Mr. A. M. Malek appeared on behalf of the plaintiff.

Ld. Adv. Mr. V. B. Rathod appeared on behalf of the defendant Nos.2 to 4.

Ld. Adv. Mr. S. M. Patel appeared on behalf of the defendant Nos.1/1,1/2,5 to 10.

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Order Below Exh. 5

In

Regular Civil Suit No. 1 / 2024

1. The present application at Exh. 5 has been filed for grant of interim injunction under Order-XXXIX, Rule 1, 2 and Section 151 of Code of Civil Procedure, 1908.

2. The applicant is the plaintiff and the opponents are the defendant and in order to avoid repetition they will be mentioned as plaintiff and defendants respectively and the land bearing Re-Survey/Block No.50 (Old Block/Survey No.108) admeasuring 1-91-13 paiki 0-28-75 Heq.Are.Sq.Mtrs. situated in the vicinity of Majara, Ta.: Prantij, Dist.: Sabarkantha will be mentioned as “*disputed land*”.

3. Facts of the present application in short are as under:
That the land bearing Block/Survey No.108 admeasuring 1-91-13 Heq.Are.Sq.Mtrs. was owned by Patel Prahaladbhai Shivabhai. which was divided into two parts after road deduction of 1500 Sqr. Mtr. for which Patel Prahaladbhai Shivabhai had sold the land amasuring 0-43-60 Heq.Are.Sqr.Mtr. to Patel Savitaben Vasantbhai for consideration of Rs.1,32,000/- and handed over the possession of the said land. Thereafter, Patel Savitaben had made entry No.1758 before revenue office. As the said land of old Survey No.108 is divided into two parts and is not partitioned in spite of being in two different places, the Revenue Officer approved such note on the condition that the seller and the buyer should

cultivate jointly. Since the public road National Highway lies through the said land and the land is divided into two sections, the land has not been divided, even though the seller has sold one part, although the seller is not the owner, his name is entered in joint name with the buyer and on that condition both names are entered. Thereafter the land bearing Survey No.108 admeasuring 0-43-60 paiki 0-28-60 Heq.Are.Sqr.Mtr. was sold to the defendant Nos.5 to 9 for consideration of Rs.1,35,000/- vide registered sale deed No.1159 but revenue entry has not been made. Thereafter the defendant Nos.5 to 9 were became owner and possessor of the said land. Thereafter defendant Nos.5 to 9 had sold the said land to the defendant Nos.1 to 4 and they had made agreement to sale wherein defendant Nos.5 to 9 had given right, title and interest of the disputed land in favour of the defendant Nos.1 to 4. Thereafter, the defendant Nos.1 to 4 had decided to sold the disputed land and Survey No.423 situated at Tajpur to the plaintiff for consideration of Rs.13,25,000/- and the defendant Nos.1 to 4 had accepted the said amount and made possession agreement in favour of the plaintiff and the defendant Nos.1 to 4 had given irrevocable power of attorney to the plaintiff. That

the defendant Nos.1 to 4 had made possession agreement in favour of the plaintiff on 22.12.2007. That the disputed land was divided into two parts. A part of which has land area 0-43-60 Heq.Are.Sqr.Mtr. paiki 0-28-60 Heq.Are.Sqr.Mtr. had kept by the defendant Nos.1 to 4 by registered sale deed but the original survey number's land has not been partitioned as per revenue law and the proceedings are pending hence names of the defendant Nos.1 to 4 were not entered in the revenue record and the sale deed could not have been executed in favour of the plaintiff. Thereafter the defendant Nos.1 to 4 had made possession agreement in favour of the plaintiff. Since then the plaintiff is in possession of the disputed land. That the plaintiff has no information that the defendant Nos.1 to 4 had made registered sale deed in favour of the defendant No.1 by mutual understanding. That the defendant Nos.2 to 4 had accepted sale amount from the plaintiff and they had made undertaking in favour of the plaintiff. That the liability to make registered sale deed of the disputed land was given to the defendant No.1 but the defendant No.1 had failed to do so. Further, the defendant Nos.1 to 4 have liability to make registered sale deed. Thereafter the defendant No.1 has sold

the disputed land to the defendant No.10 for consideration of Rs.8,00,000/- by registered sale deed No.3612 on 02.11.2023. Thereafter the defendant No.10 had tried to take possession of the disputed land from the plaintiff illegally. That the disputed land is in possession with the plaintiff. That the defendant No.10 has no right and title in the disputed land. Hence, the plaintiff has filed this suit to cancel the registered sale deed No.3612 dtd.02.11.2023. Hence, the plaintiff has filed the present application and prayed to grant the present application in favour of plaintiff and against the defendants.

4. This suit was registered on 10.01.2024 and summons were issued to the defendants. On serving of summons to the defendants, they gave their appearance through their respective learned advocates vide **Exh.33, 35 & 36** (Vakalatnamas). That defendant Nos.1/1 to 1/3 & 10 have filed their written statement at **Exh.45** wherein they have denied all the contentions of plaintiff's application and they have denied all the facts averred by the plaintiff in his plaint to be true, correct and admitted. After denying all facts of the plaintiff, the defendant Nos.1/1 to 1/3 & 10 have further

stated, that, this suit is barred by res judicata. This suit is barred by the provisions of Specific Relief Act and Limitation Act. This suit is barred by the provisions of Revenue law and registration act. This suit is also barred by law of limitation. Further, they have stated that the disputed land was not divided into two parts. Plaintiff's possession agreement is not registered. The said possession agreement is false. Further, the plaintiff has not made any legal proceedings for compliance of the agreement against the defendant Nos.1/1 to 1/3 till today. This suit is also barred by mis joinder of parties. Hence, injunction application filed by the plaintiff should be rejected with costs.

- 4.1 The defendant Nos.2 to 4 have produced their written statement vide Exh.48 wherein they have denied all the contentions of plaintiff's application and they have denied all the facts averred by the plaintiff in his plaint to be true, correct and admitted. After denying all facts of the plaintiff, the defendant Nos.2 to 4 have further stated, that, they have not breached terms of the agreement. They are ready and willing to comply with the terms of the agreement. But heirs of the defendant No.1 - Natvarbhai Somabhai Patel are not ready to

make sale deed. If the plaintiff pay the remaining amount as per the terms of the agreement, the defendant Nos.2 to 4 are ready to make sale deed. That the defendant Nos.1/1 to 1/3 are not in possession of the disputed land still they illegally made non-possession sale deed in favour of the defendant No.10 on 02.11.2023.

4.2 Further, the plaintiff has relied upon the following judgments in support of his facts which are duly read and considered by this Court :

- (1) 2023 Live Law (SC) 304 Hon'ble Supreme Court R. Hemalatha Vs. Krishna Murari
- (2) AIR 2010 Supreme Court 1654 S. Kaladevi v. Vs. R. Somasundaram and Ors.
- (3) 1987 (1) G.L.H. (U.J.) 22 (b)
- (4) 1995 (2) GLR 1369 Manubhai Bhagabhai Patel Vs. Cheebabhai Rambhai Patel
- (5) 2011 (54) R.C.R. (civil) 125 Hon'ble Punjab And Haryana High Court Kamal Kant Gupata Vs. Smt. Shashi Sawhney and ors.
- (6) 1995 (1) GLH 97 Ashvinkumar Jayantilal Shah Vs.

Harichand Kedarnath Khanan and Ors.

(7) (1996) 6 Supreme Court Cases 433 Sankalchan

Jaychandbhai Patel Vs. Vithalbhai Jaychandbhai Patel

5. On the basis of the pleadings of the parties the following issues have been arisen for the determination of the present application.

:: I S S U E S ::

1. Whether the plaintiff proves that there is a prima facie case?
 2. Whether the plaintiff proves that balance of convenience is in her favour?
 3. Whether the plaintiff proves that if interim relief as prayed for is not granted, it will cause harm which cannot be compensated in terms of money?
 4. What order?
6. For the reasons given herein, my reply to above issues is as under :-
1. Partly in the affirmative.
 2. Partly in the affirmative.
 3. Partly in the affirmative.
 4. As per final order.
7. Issue Nos. 1 to 3 are discussed together in order to avoid repetition of facts and for convince of both the parties.

8. I have heard the arguments on both the side.
9. It is well settled principle of law that while issuing a temporary injunction, the tests to be applied are (1) Whether the plaintiff has prima facie case? (2) Whether balance of convenience is in favour of the plaintiff? and (3) Whether the plaintiff would suffer any irreparable loss or injury?, if prayer for temporary injunction is not granted. It is also well settled that mere *prima facie* case by itself is not sufficient to grant injunction, the Court further has to satisfy that non-interference by the Court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. If we see the provision contained in **Under Order-XXXIX, Rule-1 of Code of Civil Procedure it is as under:-**

Cases in which temporary injunction may be granted.-

Where in any suit it is proved by affidavit or otherwise-

(a) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree, or

(b) That the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit; or until further orders.

10. Heard Ld. Advocate for the parties, read the present application and record. Ld. Advocate for the plaintiff has argued that he is ready and willing to pay the remaining consideration amount of the disputed land hence defendants are trying to snatch the disputed land wrongfully and if they are not stopped, the plaintiff would suffer irreparable loss and as such plaintiff has prima facie case and factor like balance of convenience is also in favour of the plaintiff. So, his application for interim injunction should be granted.

11. Now, on perusal of present application as well as the plaint, it appears that the plaintiff has filed this application claiming that he is ready and willing to pay the consideration amount of the agreement to sale. To support of his case, plaintiff has

produced the documentary evidence vide Mark 3/1 to Mark 3/15. Looking to the documentary evidence list from Mark 3/1 to 3/15 - Copy of Village Form No.7/12 of the Block/Survey No.108 is produced vide Mark 3/1, Copy of Village Form No.6 regarding entry No.1758 is produced vide Mark 3/2, Copy of sale deed made by the defendant Nos.5 to 9 in favour Savitaben Vasantbhai Patel is produced vide mark 3/3, Copy of irrevocable power of attorney made by the defendant Nos.5 to 9 in favour the defendant Nos.1 to 4 is produced vide mark 3/4, Copy of sale deed made by the defendant Nos.1 to 4 in favour of the plaintiff is produced vide mark 3/5, Copy of agreement made by the defendant Nos.1 to 4 in favour of the plaintiff is produced vide mark 3/6, Copy of sale deed of Surve No.423 is produced vide mark 3/7, Copy of sale deed made by the defendant Nos.5 to 8 in favour of the defendant No.1 is produced vide mark 3/8, Copy of Village Form No.6 regarding entry No.2544 is produced vide Mark 3/9, Copy of public notice for title clear certificate is produced vide Mark 3/10, Copy of legal notice is produced vide Mark 3/11, Copy of RPAD Receipt is produced vide Mark 3/12, Copy of sale deed made by the defendant Nos.1 to 3 in favour of the defendant No.10 is

produced vide mark 3/13, Copy of Village Form No.7 of block/survey No.50 is produced vide Mark 3/14 & Copy of Village Form No.12 of block/survey No.50 is produced vide Mark 3/15.

12. To support of the facts of written statements, the defendants have produced documentary evidence vide Mark 46/1 to Mark 46/17. Looking to the documentary evidence list from Mark 46/1 to 46/17 - Copy of Village Form No.7 bearing Block/Survey No.50 is produced vide Mark 46/1, Copy of Village Form No.12 bearing Block/Survey No.50 is produced vide Mark 46/2, Copy of Village Form No.7/12 bearing Block/Survey No.108 for the year 1984-85 to 1989-90 is produced vide Mark 46/3, Copy of Village Form No.7/12 bearing Block/Survey No.108 for the year 1990-91 to 2000-2001 is produced vide Mark 46/4, Copy of Village Form No.7/12 bearing Block/Survey No.108 for the year 2001-2002 to 2004-2005 is produced vide Mark 46/5, Copy of Village Form No.6 regarding entry No.1758 is produced vide Mark 46/6, Copy of Village Form No.6 regarding entry No.2181 is produced vide Mark 46/7, Copy of Village Form No.6 regarding

entry No.2281 is produced vide Mark 46/8, Copy of Village Form No.6 regarding entry No.2326 is produced vide Mark 46/9, Copy of Village Form No.6 regarding entry No.2329 is produced vide Mark 46/10, Copy of Village Form No.6 regarding entry No.2530 is produced vide Mark 46/11, Copy of Village Form No.6 regarding entry No.2544 is produced vide Mark 46/12, Copy of Village Form No.6 regarding entry No.4251 is produced vide Mark 46/13, Copy of Village Form No.6 regarding entry No.5086 is produced vide Mark 46/14, Copy of Village Form No.7/12 bearing Block/Survey No.423/1 is produced vide Mark 46/15, Copy of Village Form No.6 regarding entry No.2332 is produced vide Mark 46/16 & Copy of Village Form No.6 regarding entry No.2333 is produced vide Mark 46/17.

13. To decide whether there is prima facie case or not, I deem it fit to peruse various documents produced by the plaintiff vide document list bearing Exh.3 in support of the averments made in the plaint. Attention is drawn to document bearing mark 3/5 which is copy of the possession agreement dated 22/12/2007, mark 3/11 which is copy of an objection application. Now,

upon perusal of the aforesaid documents, it is clear that possession agreement was indeed executed between the plaintiff and the defendant Nos.1 to 4. The contention of plaintiff is that he is willing to pay the remaining amount of the agreement. Further, defendant Nos.2 to 4 have stated in their written statement vide Exh.48 that plaintiff is in possession of the disputed land now and they had decided to sale the disputed land to the plaintiff for which possession agreement has been made on 22/12/2007 and handed over the possession of the disputed land to the plaintiff. Further, defendant Nos.2 to 4 and Natvarbhai Somabhai Patel have signed in the possession agreement. That defendant No.9 had made sale deed without possession in favour of the defendant Nos.5 to 9 on 16/09/2010. That the defendant No.1 is died and heirs of the defendant No.1 is not ready to make registered sale deed of the disputed land. In such kind of situation, I am of the opinion that plaintiff does have prima facie case as the possession agreement has been notarized. Legality of the said agreement deed needs to be duly adjudicated by this Court and till that time, plaintiff is in position to avail remedy in the nature of temporary injunction. On the other side, defendant Nos. 1/1 to

1/3 have made registered sale deed of the disputed land in favour of the defendant No.10. Therefore, if both the scenarios are considered then plaintiff is at greater hardship as the plaintiff had given such huge amount to the defendant Nos.1 to 4 and on the other side, heirs of the defendant No.1 i.e. defendant Nos.1/1 to 1/3 are legal owners of the disputed land as their names have been entered in the revenue record as legal heirs and they sold the disputed land to the defendant No.10 by registered sale deed. Hence it has apprehension of losing right over the suit property by the defendant No.10. Hence, after carefully going through the material available on record, I have come to the conclusion that the possession agreement to sale has been executed between the plaintiff and the defendant Nos. 1 to 4 for the disputed land which requires consideration on merit and legality of the possession agreement to sale executed between the plaintiff and the defendant Nos.1 to 4 need to be adjudicated by this Court. Further, defendant Nos.1/1 to 1/3 & 10 have stated that defendant No.10 is in possession of the disputed land now which can not be decided without taking evidence hence considering the protection of the right of the both parties, in factual aspect of this suit, in my opinion, both

parties of this suit are hereby ordered to maintain status quo of the disputed land. Therefore, I decide point Nos.1 to 3 partly in the affirmative and in the interest of justice for point No.4, I pass the following order.

:: O R D E R ::

1. This application for temporary injunction is hereby partly allowed.
2. Both parties of this suit are hereby ordered to maintain status quo of the suit property qua possession and title till further orders.
3. No order as to cost.

Signed and Pronounced in this open court on this 20th day of November, 2024.

Data : 20.11.2024
Place : Prantij

(Bhargavsinh Ravsinh Solanki)
(Judge Code No. GJ00919)
Principal Senior Civil Judge,
Sabarkantha at Prantij.

K_J_P