

GJSK030013742020



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

Patel Natvarbhai Melabhai @ Shankabhai
...Plaintiff / Applicant

// Versus //

Solanki Ranjitsinh Narsinh
...Defendant / Opponent

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Appearance :

Ld. Adv. Mr. M. M. Pandya appeared on behalf of the plaintiff.

Ld. Adv. Mr. P. D. Prajapati appeared on behalf of the defendant.

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Order Below Exh. 5

In

Special Civil Suit No.7 / 2020

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 opponent is the defendant and in order to avoid repetition they will be mentioned as

plaintiff and defendant respectively and the agricultural land bearing Account No.710, Re-Survey No.7, Old Survey No.185 admeasuring 0-27-92 Heq.Are.Sq.Mtrs. *(considering the record of this suit, registered sale deed is produced vide Mark 4/1, considering the registered sale deed wherein admeasuring 0-27-92 Heq.Are.Sqr.Mtr. has been written hence herein this court has considered the measurement 0-27-92 instead of 0-29-92)* and Re-Survey No.540, old Survey No.206 admeasuring 0-27-56 Heq.Are.Sq.Mtr. and Re-Survey No.542, Old Survey No.209 admeasuring 0-83-17 Heq.Are.Sq.Mtr. situated at Nananpur, Ta.: Prantij, Dist.: Sabarkantha will be mentioned as “***disputed property***”.

3. Facts of the present application in short are as under:

That the plaintiff had taken encumbrances from various financial institutions. And in that way, he finally took a loan of Rs.16,00,000/- on 29/12/2018 and therefore, the plaintiff wanted to repay the encumbrances and also needed Rs.29,00,00/- for the plaintiff's personal needs, so the land broker knowing the defendant, took the plaintiff to the defendant and the plaintiff talked to the defendant about

taking Rs.45,00,000/- with interest. So the defendant agreed to give Rs.45,00,000/-. The plaintiff was informed that the survey number in your name, which is currently encumbered, will have to be given to the defendant as a mortgage and the plaintiff's signed and consent was obtained on 06/12/2019 and on the same day, the defendant issued cheques of Rs.10,00,000/-, Rs.9,00,000/- and Rs.26,00,000/- to the plaintiff on 23/10/2019 and on the same day, a mortgage deed was prepared and the plaintiff's consent was obtained. The plaintiff paid the encumbrance in Union Bank of India on 06/12/2019 with that amount and obtained no due certificate on 06/12/2019 and made entry on 07/12/2019. But when the plaintiff needed the revenue record, the plaintiff obtained the revenue record of the disputed property and the plaintiff came to know that the disputed property in the name of the plaintiff had been transferred to the defendant's name by the sale deed and in respect of the sale deed, entry No.4532 has been made on 07/12/2019. Looking to the facts of the entry, it was found that instead of entering into a mortgage agreement on 23/10/2019, the defendant has prepared a sale deed of Rs.45,20,000/-. The defendant, having an evil

intention to usurp plaintiff's properties from the very beginning, has executed sale deed keeping the plaintiff in the dark and has prepared the current disputed sale deed by showing its value of Rs.45,20,000/- and has obtained the plaintiff's false signature and consent. Further, it is the say of the plaintiff that if we look at the sale entry No.4532, the date of the sale deed is 26/11/2019. According to which, if we look at the facts of the sale deed, except for the last page of the sale deed, i.e. on page No.22, the date of the sale deed is 26/11/2019 and all the remaining pages Nos.1 to 21 have been dtd. 23/10/2019. Therefore, the necessity has arisen to file the present suit for declaration and permanent injunction. Hence, the plaintiff has filed the present application and prayed to grant the present application in favour of plaintiff and against the defendant.

4. This suit was registered on 18.12.2020 and summons was issued to the defendant. On serving of summons to the defendant, he gave his appearance through his learned advocate vide **Exh.10** (Vakalatnama). That defendant has filed his written statement at **Exh.12** wherein he has denied all the

contentions of plaintiff's application and he has 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 has further stated, that, at the time when the plaintiff sold the disputed property, it was decided between us that since the plaintiff currently has no other accommodation arrangement for him to stay, he would stay until another house is built and once the second house is ready, he would hand over this residential building as well as stables, godown etc., so the defendant agreed to stay until the second house is built out of a humanitarian perspective. Therefore, it is clear that the plaintiff is no longer the owner of the disputed property after the sale deed. Further, the defendant has stated that the plaintiff had remained present before Sub-Registrar Office, Prantij at the time of sale deed and he himself made singed and thumb and given consent as per new rules for which recording has been made before Sub-Registrar Office. Thereafter, the defendant had paid Rs.45,20,000/- to the plaintiff which was accepted by the plaintiff and thereafter the plaintiff had handed-over the possession of the disputed property. Thereafter, entry No.4532 regarding sale deed has

been made in the revenue record for which notice Section 135D of the Land Revenue Code has been served to the plaintiff and the plaintiff has not taken any objection nor challenged the said entry. Further, electricity connection is also in the name of the defendant. There is a prima facie of the defendant and balance of convenience is also in favour of the defendant still if the injunction application is granted in favour of the plaintiff then the defendant would suffer irreparable loss which cannot be compensated in terms of money. Hence, injunction application filed by the plaintiff should be rejected with costs.

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. In the negative.
 2. In the negative.
 3. In the negative.
 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 defendant has snatched the disputed property wrongfully and if he is 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 the defendant has wrongfully executed registered sale deed of the disputed property. To support of his case, plaintiff has produced the documentary evidence vide Mark 4/1 to Mark 4/23 which are duly read and considered by this Court.
12. To support of the facts of written statements, the defendant has produced documentary evidence vide Mark 14/1 to Mark 14/22 which are duly read and considered by this Court.
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 lists bearing Exh.4 and the documents produced by the defendant vide document lists bearing Exh.14, considering the facts & documentary evidence of both the parties, plaintiff has prima facie failed to prove the facts of mortgage agreement. Further, plaintiff has mainly contended that offline registered sale deed has been made by the defendant without consent of the plaintiff. Herein, considering the registered sale

deed No.1601 produced vide Mark 4/1, it prima facie shows that this sale deed is registered before Sub-Registrar, Prantij and there is a photo, thumb and signature of Patel Natvarbhai Sankabhai i.e. plaintiff on the registered sale deed. Further, after the said registered sale deed, the defendant has mutated entry No.4532. Further, it prima facie shows from the documentary evidence that the plaintiff has executed registered sale deed of the disputed property in the name of the defendant and the sale entry No.4532 was mutated at that time the notice under Section 135D of the Land Revenue Code was also served on the plaintiff. Further, it also prima facie shows that no dispute has been raised or challenged against the said entry. Further, it is the contention on behalf of the plaintiff that the defendant has cheated to the plaintiff and executed registered sale deed of the disputed property but herein plaintiff has failed to prove this facts because the plaintiff has not prima facie to show that he has filed any police complaint or has made any legal proceedings against the defendant regarding fake registered sale deed. Hence, considering the above discussions, plaintiff has failed to prove that there is a prima facie case. Even, if the relief prayed by the plaintiff is granted then it will

cause more hardship to the defendant than to plaintiff. Plaintiff has not established that he will have to suffer irreparable loss which cannot be compensated in terms of money. Mere prima facie case would not help plaintiff to get interim injunction. Therefore considering the above discussions, the issue Nos. 1, 2 & 3 are answered in Negative and for issue No.4 following order is passed:-

:: ORDER ::

1. The application for temporary injunction is hereby rejected.
2. No order as to cost.

Signed and Pronounced in open Court on 11th day of December, 2024.

Data : 11.12.2024
Place : Prantij

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

K_J_P