

GJSK030025082023



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

Manishkumar Hargovindbhai Vaishnav

...Plaintiff / Applicant

// Versus //

Bhupatji Chanduji Thakor

...Defendant / Opponent

=====

Appearance :

Ld. Adv. Mr. R. K. Punjabi appeared on behalf of the plaintiff.

Ld. Adv. Mr. R. H. Pandya appeared on behalf of the defendant.

=====

Order Below Exh. 5

In

Special Civil Suit No. 12 / 2023

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 land bearing Block/Survey No.14 (Old Block/Survey No.11) admeasuring 1-15-75 Heq.Are.Sq.Mtrs. akar Rs.5.55 paisa and the land bearing Block/Survey No.15 (Old Block/Survey No.12) admeasuring 1-17-74 Heq.Are.Sq.Mtrs. akar Rs.5.90 paisa, Account No.319 and the land bearing Block/Survey No.16 (Old Block/Survey No.13) admeasuring 0-93-24 Heq.Are.Sq.Mtrs. akar Rs.4.70 paisa, Account No.322 old condition agricultural land situated at Karmipura, Ta.: Talod, Dist.: Sabarkantha will be mentioned as “*disputed land*”.

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

That the defendant is the owner of the disputed land and the disputed land is running in the name of the defendant in the revenue record. That in need of the money, the defendant had wanted to sale the disputed land and the defendant had talked with the plaintiff regarding sale of the disputed land hence the plaintiff had wanted to purchase the disputed land. Hence it was decided to sale the disputed land to the plaintiff for consideration of Rs.31,00,000/-. That the plaintiff had given advance amount of Rs.26,00,000/- to the defendant wherein

the plaintiff had given Rs.10,00,000/- to the defendant by cheque No.721338 dtd. 04/09/2021 of State Bank of India, Pethapur branch and the plaintiff had given Rs.16,00,000/- in cash to the defendant and the remaining amount has to pay within twelve months after getting title clearance of the disputed land. Thereafter, agreement to sale No.1492 has been executed before Sub-Registrar Office, Talod on 09/09/2021 and the registered agreement to sale has been executed as per the legal provisions. That as per the conditions of the agreement to sale, defendant has to bring title clearance certificate. But the defendant has not brought title clearance certificate. Hence, the plaintiff had send legal notice to the defendant on 29/05/2023 by RPAD which was served to the defendant on 30/05/2023. That the plaintiff is ready and willing to pay the remaining consideration. 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 26.07.2023 and summons was issued to the defendant. On serving of summons to the defendant, he gave his appearance through his learned

advocate vide **Exh.6** (Vakalatnama). That the defendant has filed his written statement at **Exh.17** wherein defendant in his written statement 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, this suit is barred by mis joinder party and non joinder of party. This suit is barred by suppression of facts. Further, the defendant has stated that the plaintiff has not complied with conditions of the agreement to sale. Further, no financial transaction took place between the plaintiff and the defendant. Further, there is no legal agreement to sale has been made between the plaintiff and the defendant. 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 his 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 affirmative.
 2. In the affirmative.
 3. 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 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 4/1 to Mark 4/10. Looking to the documentary evidence list from Mark 4/1 to 4/10 - Copy of Village Form No.7 of the Block/Survey No.14 is produced vide Mark 4/1, Copy of Village Form No.12 of the Block/Survey No.14 is produced vide Mark 4/2, Copy of Village Form No.7 of the Block/Survey No.15 is produced vide Mark 4/3, Copy of Village Form No.12 of the Block/Survey No.15 is produced vide Mark 4/4, Copy of Village Form No.7 of the Block/Survey No.16 is produced vide Mark 4/5, Copy of Village Form No.12 of the Block/Survey No.16 is produced vide Mark 4/6, Legal notice is produced vide Mark 4/7, RPAD Receipt is produced vide mark 4/8, Acknowledgment is produced vide mark 4/9, Copy of agreement to sale is produced vide mark

4/10.

12. On the other side, defendant has not produced any documentary evidence in support of his written statement.
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.4 in support of the averments made in the plaint. Attention is drawn to document bearing mark 4/10 which is copy of the agreement to sale No.1492 dated 09/09/2021, mark 4/7 which is copy of the notice given to the defendant, mark 4/8 which is RPAD receipt and mark 4/9 which is acknowledgment regarding service of notice. Now, upon perusal of the aforesaid documents, it is clear that an agreement to sale was indeed executed between plaintiff and defendant. For which, plaintiff has paid Rs.26,00,000/- to the defendant as an advance amount. The contention of plaintiff is that he is willing to pay the remaining amount of agreement to sale. In such kind of situation, I am of the opinion that plaintiff does have prima facie case as the agreement to sale has been executed between the plaintiff and the defendant and the agreement to sale has been registered before Sub-Registrar Office, Talod. Legality of the sale 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.

14. Now, to decide whether balance of convenience tilts in favour of plaintiff or not, upon perusal of record of this suit, it transpires that parties had executed an agreement to sale with mutual consent, despite that defendant has not executed registered sale deed, therefore, plaintiff has to suffer as it has been pleaded by the plaintiff that he is ready and willing to pay the remaining amount. Whereas, defendant is saying that no any agreement has been made between the defendant and the plaintiff. Therefore, if both the scenarios are considered then plaintiff is at greater hardship as he has apprehension of losing right over the suit property, whereas, defendant does not have any such apprehension as he has already executed agreement to sale. Therefore, I am of the humble opinion that balance of convenience lies in the favour of the plaintiff.

15. Finally, to decide whether irreparable loss will be caused to plaintiff or not, I take resort to the averments of plaintiff in which the plaintiff has contended that he is ready and willing to pay the remaining amount of consideration to the defendant despite that the defendant is not ready to execute registered

sale deed in favour of the plaintiff. So, if temporary injunction is not granted then it is possible that defendant would make subsequent transfers of suit property and it would become not only difficult for plaintiff to claim and sustain right over suit property till final disposal of the suit, but it would also cause irreparable loss to the plaintiff.

16. Hence, after carefully going through the material available on record, I have come to the conclusion that plaintiff does have a *prima facie* case as the agreement to sale has been executed between the plaintiff and the defendant for the disputed land which requires consideration on merit and legality of the agreement to sale executed by the defendant needs to be adjudicated by this Court. Till that time, in factual aspect of this suit, in my opinion plaintiff is in position to avail help of this Court by way of temporary injunction as balance of convenience is in his favour and irreparable loss will be caused to the plaintiff due to subsequent transfers of the suit property till final disposal of the suit. Hence, in light of the discussions made in preceding paragraphs, I am of the view that the plaintiff has succeeded in showing the *prima facie* case, balance of convenience and irreparable injury in his favor. Therefore, I

decide point Nos.1 to 3 in 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. The defendant shall not sell, mortgage, gift, assign or transfer the disputed land to any other person or create any encumbrance or security thereon or cause any alteration in the evidence of ownership or the record of rights till final disposal of the suit.
3. No order as to cost.

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

Data : 20.12.2024
Place : Prantij

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

K_J_P