

**In the Court of Principal Civil Judge,
Sabarkantha @ Talod**

Mehta Shaileshkumar Jashvantlal

...Plaintiff / Applicant

// Versus //

Heirs of Zala Bhathisang Hamirsang & others

...Defendants / Opponents

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Appearance :

Ld. Adv. Mr. K. B. Patel appeared on behalf of the plaintiff.

Ld. Adv. Mr. L. J. Solanki appeared on behalf of the
defendants.

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Order Below Exh. 5

In

Regular Civil Suit No. 1 / 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 opponents are the defendants and in order to avoid repetition they will be mentioned as plaintiff and defendants respectively and the disputed land bearing account No.321 old

block/survey No. 279/1 new block/survey No.683 admeasuring 1-10-28 Heq. Are. Sq.Mtrs. akar Rs.4.75/- paisa after resurvey account No.421 block/survey No.709 admeasuring 0-84-51 Heq. Are.Sq.Mtrs. akar 3.65/- paisa paiki 0-73-52 Heq. Are.Sq.Mtrs. situated at Jorajina Muvada, Ta.: Talod will be mentioned as ***“disputed land”***.

- 3.** Facts of the present application in short are as under:
That the disputed land had independently owned by the ancestor of the defendants. Now the disputed land is in the name of the defendants, deceased Zala Adesinh Bhathisinh and others in the revenue record. That the defendant Nos. 1/1, 2/1, 3 and deceased father of the defendant No. 1/2 - Adesinh Bhathesinh wanted to sale the disputed land hence they had meet with the plaintiff. That deceased father of the defendant No. 1/2 - Adesinh Bhathesinh had decided to sale the disputed land to the plaintiff hence agreement to sale was notarize by the defendant Nos. 1/1, 2/1, 3 and deceased father of the defendant No. 1/2 - Adesinh Bhathesinh in favour of the plaintiff on

30/01/2013 with possession wherein sale amount of Rs. 8,85,000/- has been decided. That the plaintiff had paid Rs.1,00,000/- as advance amount in cash to the defendants. Thereafter the defendant Nos. 1/1, 2/1, 3 and deceased father of the defendant No. 1/2 - Adesinh Bhathesinh had accepted Rs. 2,50,000/- from the plaintiff. That the defendant Nos. 1/1, 2/1, 3 and deceased father of the defendant No. 1/2 - Adesinh Bhathesinh had given assurance to the plaintiff that registered sale deed will be made after title clearance of the disputed land. Hence, the defendants are bound by legal provisions to comply with the terms and conditions stated in the agreement to sale. Thereafter though the repeated reminders had made by the plaintiff to the defendants, they had made excuses and the defendants had told to the plaintiff that possession of the land will not be given and the disputed land will be sold to other persons. Hence, the plaintiff had given notice to the defendants by RPAD though served but the defendants have not given any reply. That the plaintiff was and is always willing and

happy to obtain disputed land as well as to comply with all the conditions mentioned in the sale agreement with possession. Hence, plaintiff has compelled to file the suit. In the present application, the plaintiff has prayed for an order to the effect that, defendants shall not transfer or mortgage the disputed land to any other person, agents or assignees. Hence, the plaintiff has filed the present application and prayed to grant the present application in favour of plaintiffs and against the defendants.

4. This suit was registered on 03.01.2023 and summons were issued to the defendants. On serving of summons to the defendants, they gave their appearance through their learned advocates vide **Exh. 10** (Vakalatnama). That defendants have filed their written statement at **Exh. 12** wherein defendants in their written statement denied all the contentions of plaintiff's application and they have denied all the facts averred by the plaintiffs in their plaint to be true, correct and admitted. After denying all facts of the

plaintiffs, the defendants have further stated that, this suit is barred by law and this suit is barred by non joinder of necessary parties. They have further stated that plaintiff has send false notice. Plaintiff has mentioned false four boundaries of the disputed land. The plaintiff has filed this suit to grab the disputed land. If injunction is granted in favour of the plaintiff, then defendants have to suffer irreparable loss which can not be compensated in terms of money. Balance of convenience is also in favour of the defendants. Hence, this application shall be rejected with costs.

The plaintiff has filed rejoinder at Exh - 15 and denied the contention of the defendants herein.

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 Negative..
 2. In Negative.
 3. In 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 Ld. Adv. for the plaintiff Mr. K.B.Patel who submits that suit property belongs to ancestor of the defendants and out of the total property 0-73-52 H. RA. Sq.Mtr is sold to plaintiff. There is a sale agreement between the parties which is produced at M - 3/1, which is executed by defendant no. 1/1, 2/1, 3 and 1/2. The agreement was made and possession was handed over to plaintiff. The defendants herein has accepted Rs - 2,50,000/-. The Ld. Adv. for the plaintiff has drawn

the attention of the court at T.P Act section 48. It is further submitted that the possession was with plaintiff but plaintiff has given the suit property to defendant for cultivation of suit land. It is further submitted that the notice was issued on dated 10.08.2022 which is at M - 3/7 though the notice was served no reply is filed by the other side. Therefore the fact stated in the sale agreement are not denied by the defendants. Therefore plaintiff has prima facie case and balance of convenience is also in favour of plaintiff as plaintiff has paid the amount and therefore defendants herein have no loss and therefore in view of the above fact and circumstances the present application of the plaintiff shall be allowed.

The Ld. Adv. for the defendants have filed written argument at Exh - 19.

- 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 the defendants are bound by legal provisions to comply with the terms and conditions stated in the agreement to sale. That the defendants are trying to snatch the right of the plaintiff and also tried 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 plaintiffs. 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 was and is always willing and happy to comply with all the conditions mentioned

in the sale agreement. To support of his case, plaintiff has produced the documentary evidence vide Mark 3/1 to Mark 3/8. Looking to the documentary evidence list from mark 3/1 to 3/8, copy of agreement to sale is produced vide mark 3/1, copy of Village Form No. 7 bearing Survey No. 683 is produced vide mark 3/2, copy of Village Form No. 8-A bearing Survey No. 683 is produced vide mark 3/3, copy of voucher of Rs. 50,000/- dtd. 02/04/2015 is produced vide mark 3/4 & mark 3/5, Copy of legal notice is produced vide mark 3/6, Copy of R.P.A.D receipts are produced vide Mark 3/7 and copy of Village Form No. 7/12 bearing Survey No. 683 is produced vide mark 3/8.

- 12.** On the other side, defendants have filed their reply at Exh - 12 and written arguments at Exh - 19
- 13.** As discussed above & considering the documentary evidence, the plaintiff has produce any agreement to sell. The village form no. 7 and 8 A is produced at Mark - 3/2, 3/3 and 3/8, on perusal of the same the suit property is joint property. There is no document on record to show that prima facie the suit property is

partitioned between the share holders.

On perusal of the sale agreement it is made for the portion of land i.e 0-73-52 out of total area of land as per new measurement i.e 0-84-51, new block survey no. is 709. In this survey number there are other share holders and in joint possession of the other co sharer apart from the defendants herein and all of them had not made sale agreement in question.

It is also not on record that sale agreement made was with consent of other co share holders. Therefore the exact location of the land for which the sale agreement is made was in ownership and possession of defendants and in sole ownership and possession defendants herein cannot be believed.

Further the sale agreement is of year 2013 i.e 10 years old. It is said by the plaintiff that the possession of the suit property is with plaintiff but he has given the same to defendants for cultivation. To establish the said fact no any document evidence is produced to prima facie establish that the possession of the suit property is with plaintiff.

- 14.** The plaintiff has produce zerox copy of the receipt at M - 3/4 and 3/5 pertaining to the amount received by the defendants. Plaintiff has alleged that the amount was received by defendants. But defendants have not admitted the said fact therefore the said issue can be decided only after leading the evidence. Further M - 3/6 is notice issued by the plaintiff to defendants, the said notice is also issued after almost 10 years from date of sale agreement for performance of sale agreement but defendants have denied specifically that no such agreement was executed between them.
- 15.** In view of the fact and circumstances discussed as above, whether other co owner of property had a knowledge of such agreement to sale ? Because the suit property as shown in record of rights shows that there are other co sharer on the suit property.

Further their is no prima facie evidence to show that there was division of land amongst the co sharer pertaining to suit property, nor their is any such pleadings. There is also no pleadings on record that all

the joint holder of the disputed land have agreed to sell the disputed land to plaintiff.

The burden to prove prima facie case is on plaintiff and even if the facts alleged in the plaint is believed at face value even then agreement to sale on which plaintiff is relying is not executed by all the owners of the property nor any partition has taken amongst the the co sharer therefore also the fact of agreement to sale is matter of evidence and is required to be proved at evidence stage.

On reading of the plaint, it seems that only defendants have accepted the amount of consideration Rs - 1,00,000/- but no prima facie document/reciept is produced to show that the said amount was recieved by the defendants in view of the agreement to sale and therefore it is a matter of evidence and can be decided only after leading evidence by parties.

On reading of the plaint and the receipt at M -3/4, it seems that only defendant no. 2/1 has accepted the amount of consideration Rs - 50,000/- on behalf of all the defendant is a matter of evidence.

The other person who has accepted the amount i.e Zala Ranjitsinh kesari is not made party to the suit. There is no voucher number mentioned in the receipt produced at M - 3/4 and 3/5.

In order to grant interim injunction in favour of plaintiff, plaintiff has to satisfy three condition and essential ingredient of Order 39 Rule 1 &2 of CPC.

In view of what is discussed as above, the agreement to sale produced by the plaintiff is required to be proved by the plaintiff by leading proper evidence. The possession is of defendants is an admitted fact by the plaintiff side. Therefore there is no prima facie case of the plaintiff. Further, if the present application is allowed then it will cause more hardship to the other co sharer who may not be aware of any such sell transaction.

On the other hand plaintiff will not have any hardship or irreparable loss if interim injunction is not granted. Considering the above fact and circumstance on record at this stage only pleadings and the documents produce along with the plaint is to be

considered and for foregoing reasons and discussion as above, the plaintiff has failed to prove all essential ingredient of the Order 39 Rule 1 & 2 of CPC hence I answer issue no. 1, 2 and 3 in Negative and for issue No. 4 pass the following final order.

:: FINAL ORDER ::

- 1.** The application for temporary injunction is hereby Rejected in toto.
- 2.** Cost shall be the cost in the cause of the suit.

Signed and Pronounced in open Court on 22nd day of April, 2024.

Place : Talod
Date : 22.04.2024

(Vinay Vagishdutta Shukla)
Principal Civil Judge,
S. K. @ Talod
Judge Code No. GJ01343

KJ_P