

ORDER BELOW EXHIBIT NO.5

1.This order shall dispose of the application filed by the plaintiffs Under Order XXXIX Rule 1 and 2 for granting of interim injunction against defendants restraining the defendants or their men from selling or transferring or changing the appearance of agricultural land of old tenure situated at Village – Boriya Becharaji, Taluka – Talod, Dist. – Sabarkantha, bearing survey block no. 237, old block/survey no. 254 admeasuring 1-40-86 hectare are sq. mtrs., account no. 340, out of which land situated on western side admeasuring 0-69-10 hectare are sq. mtrs., (hereinafter referred to as suit property) and restraining the defendants from handing over the possession or ownership of the suit property to other person till the final disposal of the property.

2.Read the plaint as well as the present application. The plaintiffs herein have filed the

present suit for declaration and permanent injunction and for cancellation of sale deed.

3. Summons & Notice issued by the Court was duly served upon the defendant no. 02 to 04 but the defendant no. 02 to 04 did not appear before the Court, resultantly the Court ordered to proceed ex-parte in their absence whereas summons & notice issued upon the defendant no. 01 returned with the endorsement that she has died and suit came to be abated as against her.

4. The plaintiff submitted that the plaintiffs mortgaged the suit property to deceased Jagmalbhai Heerabhai Desai. It is contended that mortgage period came to an end in 2004 and to execute redemption deed Jagmalbhai called the plaintiffs to Sub-Registrar's office and by playing fraud, took the signature of the plaintiffs on sale deed under the pretext of redemption deed, and executed registered sale deed of suit property and on the basis of sale deed the defendants refused to give possession of

the suit property and threatened to sell it to other person, therefore, the plaintiff was constrained to file the suit along with the present application.

5. It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court normally applies the following tests:-

1. Whether the plaintiff has a prima facie case;
2. Whether the balance of convenience is in favor of the plaintiff; and
3. Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

6. In the present case court proceeds to see if all these three ingredients are fulfilled. The existence of a prima facie case and infraction of such right is a condition precedent for grant of temporary injunction. The prima facie case

doesn't mean a case proved to the hilt. The only requirement is that on the face of it there should be a case in favor of the plaintiff.

7. The main contention of the plaintiffs in this application is that the elder/senior of defendants got the sale deed, registered bearing no. 722/2004, executed in his favor by playing fraud and that they have an apprehension that the defendants on the basis of sale deed would sell the suit property during the pendency of suit.

8. On perusing the record of the case it transpires that there is nothing on record which could suggest slightly that Jagmalbhai Heerabhai played fraud and took the signature of the plaintiffs on the impugned sale deed under the pretext of redemption deed. The Court is of the considered view that whether Jagmalbhai Heerabhai played fraud or not is a matter of fact which can be decided only after leading evidence. However, the Court is of the considered view that since the possession of the suit property is with the

defendants and if the defendants sells or transfer the suit property to third person then it may result in multiplicity of proceedings. Further, it is equally important at this stage to protect the rights and interest of both the parties; therefore, it would be in the interest of justice if both the parties maintain the existing state of affairs. Therefore, the Court is of the considered view that in order to protect the interest of both the parties it is necessary to maintain status quo. In the light of discussion made above I pass the following final order:

ORDER

1. Both the parties are hereby directed to maintain status quo with regard to the suit properties till the final disposal of the suit.
2. Looking to the facts and circumstances of the case, there shall be no order on costs.

Signed and Pronounced in this open court on this 09th
day of December 2025.

Date: 09/12/2025

(Sunil Chaudhary)

PCJ, Talod,

Judge Code: GJ01378