

Special Civil Suit No.28/2016

Joint Order under Exh. 5 & 24

1. Brief facts of the present application at Exh.5 are: defendant No.1 had properties of block No.680 of which revenue survey No. is 612/2 and block No.640/paiki 2, both of old tenure, situated at village Manekpore, Tal.Bardoli, Dist.Surat. Plaintiff made agreement of sale with defendant No.1, in presence of her son on 9-1-2016 for the suit property and plaintiff executed soda-chitthi with possession in favour of plaintiff. Even defendant No.1's son Bharatbhai Valjibhai and Amrutbhai Parmar have signed on Soda-chitthi. Defendant No.1 executed Soda-chitthi-cum-receipt of accepting money in plaintiff's favour. Since then, plaintiff is in possession of the suit property. But, defendant No.1 executed sale deed for the property of block No.680 and 640/paiki 2 in favour of defendant No.2 on 5-3-2016 to gain more amount. Two sale deeds are executed at No.1257/16 and 1258/16 respectively. Hence, these sale deeds are illegal. Defendant No.1 has behaved against the conditions of agreement to sell which is executed in his favour. Plaintiff has filed present suit, so that defendant do not disturb his possession and rights towards the suit property. After such submission, plaintiff has asked for the interim injunction that the defendants be ordered to not to disturb his possession and use of property of **block No.129, survey No.149 of village Moti-pardi, Tal.Mangrol, Dist.Surat till the final decision of the present suit. (It is noteworthy here that the description of the property made in the suit and interim injunction do not consists facts of any such block No.129, survey No.149 of village Moti-pardi, Tal.Mangrol, Dist.Surat.)**

2. Defendant No.1 has filed w.s. at Exh.22 and after denying the allegations, she has submitted further that no legal contract is made in favour of plaintiff. she has not executed any Soda-chitthi in his favour and she has also not received any amount from plaintiff. She herself is in the possession of the suit property. Hence, no question arises regarding plaintiff's possession in the suit property. In fact, on 12-3-2016, plaintiff came to her home between 3:00 to 3:30 noon. At that time, her grand-son's exams was going on. She and her son Amrutbhai were present at home and plaintiff asked her that he has come from Gandhinagar to give her money under Anandiben Garibi Yojna and he handed over her one green cover consisting of Rs.10,000/- and as receipt, he obtained her signature on a paper and her son signed as witness. Present suit is barred by Stamp Act and Registration Act. Suit is well planned conspiracy against her.

2.1 It is submitted further that she has never executed any sale deed in favour of defendant No.2 also. Defendant No.2 approached her and proposed Rs.85,00,000/- per vingha to her and he promised to pay the remaining amount after the execution of the sale deed and in that manner, both the sale deeds were executed in defendant No.2's favour. But, they are made executed without consideration and hence, illegal. Entry Nos.5775 and 5776 are illegal. After making such submission, she has requested to reject the plaintiff's interim application. She has also filed counter claim for the said suit.

2.2 **At Exh.24, Defendant No.1 has filed counter interim injunction application** and after mentioning the facts as stated in above para No.2 and 2.1, she has mainly asked for the interim injunction that plaintiff and defendant No.2 be ordered to not to make any kind of infirmity or obstruction in her possession and do not make any such act, by which the identity of property gets wasted.

3. Defendant No.2 has filed w.s. at Exh.20 and after denying the allegations, he has further submitted that the Soda-chitthi is forged and fabricated and illegally he is trying to grab the suit property for no legal reason.

4. Plaintiff has filed counter affidavit as well as w.s. for the counter claim of defendant No.1 and after denying the allegation, he has submitted further that defendants are in collusion with each other. The value of property shown by defendant No.1, itself clears that she has to pay Rs.75,000/- towards Court fees, otherwise, she can not file counter claim.

5. Heard Ld. Advocates of all the parties. Moreover, at Exh.35 written arguments is produced by the plaintiff. Further, it is argued by the plaintiff's Ld. advocate that Court commissioner panchnama is in his favour. He has paid huge amount towards Soda-chitthi. Hence, he has legal right over the suit property. He is in the possession of the suit property and hence, his possession should be protected in all the circumstances.

5.1 On behalf of defendant No.1, it is argued that no amount is paid to defendant No.1 as said by the plaintiff. Plaintiff has played a well planned conspiracy against her and hence, plaintiff's suit is not tenable. Moreover, defendant No.2 has not paid her amount as was promised by him to be paid after the execution of the sale-deed. She is not paid the total consideration by defendant No.2 and in that circumstances, she has also prayed for the interim injunction against plaintiff as well as defendant No.2.

On behalf of defendant No.1, it is mainly argued that plaintiff and defendant No.2 are in collusion with each other. Both have made criminal conspiracy against her, because the documents produced by plaintiff contains the statement of defendant No.2's account also and it is not possible to obtain without the help of defendant No.2. In this manner, it is very apparent that

plaintiff and defendant No.2 are in collusion with each other. Both wants to grab the suit properties any how. Defendant No.2 has not paid any amount towards the purchase of the suit properties. The transaction shown in the Bank account of defendant No.2 are very significant. First of all defendant No.2 deposited amount in defendant No.1's grand-son and then on the very next date he took them back and on the very next day, he again deposited only Rs.12,00,000/- in defendant No.1's account. Defendant No.1 is ready to pay this amount to defendant No.2. After such submission, it is requested to allow her interim relief application as well as to reject plaintiff's injunction application, so that the possession cannot be disturbed.

5.2 Whereas on behalf of defendant No.2, it is argued strongly that defendant No.1 is paid the consideration as mentioned in the sale deed. Now she is asking for illegal amount which was never promised by the defendant No.2. Sale deed is legally executed and total amount for consideration of the sale deed is paid to her. Plaintiff has prepared forged and fabricated Soda-chitthi to grab the entire suit property and after such argument, it is requested to reject both the injunction applications.

6. On behalf of plaintiff, following documents are produced with the list of Exh.3:

Mark 3/1 is 7/12 of block No.680.

Mark 3/2 is 7/12 of block No.640/paiki 2

Mark 3/3 is Soda-chitthi of dated 9-1-2016.

Mark 3/4 is objection application moved by the plaintiff.

Mark 3/5 is sale deed No.1257/2016.

Mark 3/6 is entry No.5775.

Mark 3/7 is sale deed No.1258/2016.

Mark 3/8 is entry No.5776.

Mark 3/9 is complaint given by the plaintiff to the Bardoli police station.

Mark 3/10 is defendant No.1's Adhar-card.

Mark 3/11 is defendant No.1's son's Adhar-card.

It is noteworthy here that at Exh.23, two documents are produced by plaintiff, (as stated in first line of the page) and in signature, it is mentioned as advocate of defendant No.1. This seems the mistake by slip of pen, because looking to the contention, it is very clear that it is produced on behalf of defendant No.1, then too, plaintiff is mentioned.

These documents are:

Mark 23/1 is objection given to Mamlatdar, Bardoli by defendant No.1

Mark 23/2 is notice served on defendant No.1 regarding RTS Case No.11/2016.

7. As stated in above para 1, last line the property mentioned in the relief para of interim injunction application at Exh.5 are not relevant or not mentioned either in the plaint or in interim injunction application, that may be slip of pen and hence, this Court has read the relief para according to the properties nos. of the suit.

8. Plaintiff as well as defendant No.1 have asked for interim injunction. For that, plaintiff mainly relies upon mark 3/3 document, which is on a plain paper which bears a title 'kabja sahit ni Soda-chitthi'. This document is on a plain paper. It is neither on stamp paper nor registered anywhere in any manner. This document is said to be executed on 9-1-2016. It is mentioned in this document that Rs.75,00,000/- are paid towards said Soda-chitthi, but plaintiff has not produced any document either Bank statement or any other document, to show the transaction of this amount. No such document of Income-tax Department also is produced to prove this fact even *prima facie*. No other document to show the plaintiff's entitlement regarding the suit property is produced till yet on record.

9. Plaintiff has produced two sale deeds at marks 3/5 and 3/7 for the suit properties, by which sale deeds are executed in favour of defendant No.2 by defendant No.1. Against this, plaintiff has asked for interim injunction. Defendant No.2 has also challenged Soda-chitthi as well as both the sale deeds executed in favour of plaintiff and defendant No.2 respectively.

10. The sale deeds executed in favour of defendant No.2 which are on record at marks 3/5 and 3/7 clearly show that and in fact defendant No.1 also agrees that she has made signature on the sale deeds, but she has taken objection that she is not paid the amount as decided. The amount mentioned in sale deed, are very less than the amount which is now asked by defendant No.1. The defence taken by defendant No.1 in this regard that she is illiterate and hence, she could not understand.

11. Generally sale deeds are conclusive proof and when it is executed before Registrar, after paying the stamp duty, it is presumed to be legal, valid and executed for consideration. Some amount is paid by cheque by defendant No.2 and that is mentioned in the sale deeds also. *Prima facie* no person can be allowed to deny after executing the sale deeds.

12. Plaintiff is asking relief relying upon a Soda-chitthi written on a simple paper, for which, defendant No.1 says that it is executed by forged and conspiracy, whereas the sale-deed executed in favour of defendant No.2 are not agreed by defendant No.1, because as per her say, she is not paid the agreed amount.

13. The sale deeds are executed, is an admitted fact, but dispute is regarding the payment of amount. Defendant No.2 has not produced any evidence to show the facts of payment to defendant No.1. Though Ld. advocate of defendant No.1 has **argued that plaintiff has produced Bank**

statement along with the sale deeds, but this seems to be false submission, because in Court record, no such Bank statement of defendant No.2 is produced by plaintiff. On this aspect, the submission is found to be false. How this argument is led by Ld. Advocate of defendant No.1 is not clear to this Court at this juncture.

14. Defendant No.2 has not produced any evidence to show the payment to defendant No.1 towards the sale deed, which can be produced by him. Not even any Income-tax Department's document is produced by him to prove the transaction of money or property. But, till the contrary is proved, no decision can be taken regarding the possession or any other Issue. All the parties claim to be in the possession of the suit property.

15. Defendant No.1 has not made any clear submission regarding the remaining amount of sale deed, but her main allegations is that the amount is not paid, as was agreed. That means, *prima facie* it seems that she is asking for the amount, which was decided of the record and which is not legal.

16. Court commissioner panchnama is on record with the list of Exh.11, but looking to that, it does not show that whose possession is there on the suit properties. Merely putting a hoarding on any property is not even a *prima facie* proof that the said property is in his possession.

17. If defendant No.1 had any objection regarding the non-payment of sale deed, she could immediately file a suit, but she has not done so. She has filed counter claim in a suit, which is filed by plaintiff for which, she claims that the Soda-chitthi is prepared by forge and illegal submission.

18. The facts of present application at Exh.5 and Exh.24 are suspicious and ambiguous. They are such that no justifiable conclusion can be

made regarding the suit properties at this point of time. Neither Exh.5 nor Exh.24 are of the nature that they show *prima facie* case.

19. *Plaintiff has come with the suit and defendant No.1 with counter interim injunction application hence, they have to establish their case prima facie also at this stage, without that, they cannot be allowed any relief asked by them by interim injunction application or by counter injunction application. For any interim injunction application, it is required for the plaintiff to prove that, all the three essential ingredients are in his favour that means, he has to prove that he has prima-facie case. But looking to the facts and circumstances, prima-facie it seems that neither plaintiff nor defendant No.1 has prima-facie case. Because they have not produced minimum evidences on record till yet,* by which it can be believed that there is *prima- facie* case. The balance of convenience is also not in their favour. Then no question arises regarding the irreparable loss. Merely submitting facts is not adequate. It has to be supported with adequate evidences at this stage also.

20. Looking to the above discussion, this Court is of the view that, it is required to record the entire evidence before passing any relief in favour of any party of the present suit. If any relief except *status-quo* is allowed at this stage, it will surely cause miscarriage of process of law and it will seriously prejudice the final judgment of this suit. Order for *status-quo* shall be justifiable because it will neither benefit any wrong-doer nor protect any illegal right. But, the further transactions can be stopped to any extent by such order.

21. In view of the above discussion, following order is passed under Exh.5 and Exh.24;

:: O R D E R ::

All the parties are ordered to maintain *status quo* regarding the suit property till the final disposal of the suit. No party shall create any third party interest regarding the suit properties till the final judgment of the present suit.

No order as to cost.

Pronounced in open Court on 30th June, 2017.

Bardoli.
Date: 30-6-2017

(Dr. Manjudevi Shardaprasad Pande)
Principal Sr. Civil Judge & ACJM,
Bardoli
U.I.Code-GJ00860