

Special Civil Suit No.13/2015
Order passed below Exhibit –5

- 1 Plaintiff has filed suit for Specific Performance of the Contract, declaration and permanent injunction along with this suit plaintiff has filed this application and prayed for temporary injunction under the Order 39 of Code of Civil Procedure. Plaintiff has mentioned the suit property in para 1 which are as below.

Sr	Block No.	Area (Hectare square meter)	Assessment (Rs. Paisa)	Khata No.	Name as per 7/12	
1	436	2-65-00	27.20	727	Babubhai Mangukiya Pravinbhai Mangukiya	Kalubhai Kalubhai
2	440	4-89-00	46.45	741	Anandbhai Mangukiya	Kalubhai
3	445	3-43-00	31.10	742	Babubhai Mangukiya Pravinbhai Mangukiya	Kalubhai Kalubhai
4	418	1-08-00	10.70	715	Sanjaybhai Hapani Nileshbhai Suhagiya	Vashrambhai Mansukhbhai
5	446	3-68-00	34.50	713	Sanjaybhai Hapani Nileshbhai Suhagiya	Vashrambhai Mansukhbhai
6	434	2-13-00	20.30	714	Sanjaybhai Hapani Nileshbhai Suhagiya	Vashrambhai Mansukhbhai
7	417	1-26-00	12.45	63	Rameshbhai Kanjibhai +19	
8	441	0-66-00	6.05	38	Savitaben Durlabhbhai +3	

9	442	0-32-00	2.95	51	Maganbhai Nathubhai Prabhubhai Nathubhai
10	443	0-38-00	3.50	50	Naranbhai Bhanabhai
11	444	0-65-00	5.95	126	Bhikhiben Wd/o Somabhai Hira

- 2 Plaintiff has stated that the said suit property has been sold by Lallubhai Vallabhbhai, Shankarbhai Lallubhai, Ramanbhai Lallubhai, Balvantbhai Lallubhai etc to the plaintiff by way of agreement of sale on dated 15 December, 2010 and with sale consideration amount was Rs.3,60,45,000/- and on the time of sale of agreement plaintiff has paid Rs.1,09,00,000/- and further plaintiff had paid Rs.11,00,000/- before execution of the said sale agreement and hence total Rs.1,20,00,000/- has been paid by plaintiff to the owner of the suit property by cash and on the same time defendant no. 1 to 4, plaintiff and two witnesses have been signed in a sale agreement and it is registered before the notary in registered serial no. 1599/2010 on dated 20 December, 2010.

It is also contended that the said sale agreement has been created in the name of legal heirs of late Lallubhai Vallabhbhai.

- 3 Plaintiff further stated that plaintiff had also paid another sale consideration amount Rs.2,30,00,000/- to defendant by way of piece-meal and as per the sale consideration which has been paid by plaintiff, total amount Rs. 3,50,00,000/- paid to defendant, and plaintiff had got the possession of the suit property. Plaintiff further stated that outstanding amount was Rs.10,45,000/- but due to the dispute between co-owner of the said disputed property, sale deed has been not prepared and executed , and also contended that due to the death of original owner of the suit

property Sale deed has been not executed.

- 4 Plaintiff further stated that plaintiff was ready and willingness to pay the outstanding amount but due to internal dispute of the defendant and due to the death of several owner of the suit property registered sale deed has been not prepared by parties.
- 5 Plaintiff further stated that the name of the defendant no.1 to 4 not registered in a revenue record but he is actual owner and possession of the suit property and the said sale agreement done with the condition that sale deed will be executed after the removal or with the consent of the name of defendant no 11 to 47 and other family member of defendant and hence defendant was duty bound to make or execute the sale deed with free title . Plaintiff had got the possession of the suit property but on dated 02 March, 2015, plaintiff has got knowlege after receiving the revenue record that defendant no.1 to 4 and defendant no.11 to 47 had sold the suit property to another person and hence, in the continuation of the sale agreement and performance of the contract, plaintiff has filed this suit for the specific performance of the contract.
- 6 Plaintiff has further stated that the defendant no.1 to 4 and 11 to 47 has sold the suit property by way of registered sale deed its particular are as follows.

Sr.	Block no.	Document No.	Selling amount	Date
1	436	746	4,51,000/-	09.11.2012
2	440	226	4,99,000/-	06.03.2013
3	445	745	4,95,000/-	09.11.2012
4	418	624	4,25,000/-	18.09.2012
5	434	623	4,45,000/-	18.09.2012
6	446	622	4,50,000/-	18.09.2012

And prayed temporary injunction during the final disposal of the suit as per the para 10 of this application.

7. The said suit registered in Special Civil Suit Register and issue notice and after serving notice the defendant no.31, 33, 34, 35, 37, 38, 39 has filed written statement vide Exhibit-14 and denied the contention of the suit and also prayed that plaintiff suit is bar by non-joinder of necessary party and mis-joinder necessary party and hence the said injunction application is required to be rejected with cost but said defendant has further denied the contention of the sale agreement in para no.4 and stated that the suit property which has been mentioned in serial no./schedule no.7 in para 1 is ancestral property of the defendant and it was running in his possession, he has also stated that the said suit property has been sold by their predecessor and given possession of the suit property and as per that transaction original owner purchaser has got the possession of the suit property, the said defendant further stated that the sale agreement of defendant no.1 to 4 is true but plaintiff has sold to Lakshmanbhai Jerambhai and Dharmeshbhai S Patel by way of sale agreement and hence possession of the suit property has been not given to plaintiff .Defendant no.1 to 4 have possession of the suit property and after 2011 possession of the suit property pass from plaintiff to Lakshmanbhai and Dharmeshbhai Patel and also defendant no.5 to 9 and hence plaintiff has not got the ownership or the possession of the suit property and possession of the suit property had got by Lakshmanbhai Jerambhai and Dharmeshbhai S patel by way of transfer and hence plaintiff has never cultivated the said suit property for the plaintiff was not a

farm labour of the suit property and hence contention which has been mentioned by the plaintiff in his plaint is totally false and fabricated and hence the plaintiff suit as well as this application is required to be rejected.

- 8 The said defendant further stated that the plaintiff suit is barred by law of limitation and also contended that plaintiff not come before the Court with clean hand and there is no prima facie case here it is also take dispute regarding the court fee and stated that plaintiff has used Rs. 38,500/- court fee and as per the amount of sale agreement maximum court fee 75,000/- is required to be used by plaintiff but he is not used such an amount and hence due to the insufficient court fee the said application is required rejected with cost.
- 9 Defendant no.5 to 9 has also filed their written statement vide Exhibit-17 and he has stated that the plaintiff has make the suppression of material fact and hence the said suit is required to be rejecte. Plaintiff has field suit without cause of action, and the said suit is barred by law of delay, latches acquiesce estopple defendant no.5 to 9 has also stated that they have not disputed regarding the sale agreement which has been mentioned in para 2 of plaint and injunction but taken dispute regarding the payment of the consideration amount Rs.2,30,00,000/- and consideration amount Rs. 3,50,00,000/- and outstanding amount Rs. 10,45,000/- and also taken dispute regarding the contention of the internal dispute of the co-owner of the suit property. Which has been mentioned para 3 of the plaint, the said defendant has also denied the contention of the plaint in his written statement and disclosed the actual fact in para no.15.
- 10 The defendant no.5 to 9 has also stated that Lakshmanbhai

Jerambhai Sonani and Dharemeshbhai S Patel has agreed to purchase and sale of the suit property with opponent no.1 to 4 and hence as per agreement pf sale, the sale consideration regarding one vingha has been decided by both the parties amounted Rs. 5,71,000/- and hence total amount of the suit property has been decided by both the parties amounted Rs. 5,08,19,000/- and out of this consideration amount. Plaintiff has got 11,00,000/- hence from the date of said sale agreement to 31 December, 2010 40% amount amounted Rs.2,03,27,600/- has been paid on dated 15 December, 2010 out of this amount, plaintiff has agreed for sale agreement and as per the notarial agreement no. 03/2011 dated 02.01.2011, possession of the suit property has been given by plaintiff to Lakshmanbhai Jerambhai Sonani and Dharmeshbhai S Patel. Lakshmanbhai Jerambhai Sonani and Dharmeshbhai S Patel has paid the sale consideration amount by way of eight installments and after payment of sale consideration sale deed execute.

- 11 In short plaintiff has not got the ownership of the suit property and also not got the possession of the suit property inspite of that fact, plaintiff has falsely stated that he had got the possession of the suit property and hence the said defendant has filed complaint against them in Valod police Station.
- 12 The said defendant also stated that as per the plaintiff's plaint Rs.10,45,000/- is outstanding amount but plaintiff has stated in RTS Appeal 15/2015 declared that total sale consideration amount has been paid by him Rs. 3,85,45,000/- and hence plaintiff has made suppression of the material fact and hence request to reject this application with cost.
- 13 Defendant no.10, 18 and 19 has filed written statement vide

exhibit-20 and he has also denied the contention of the plaintiff's plaint, hence stated that plaintiff has disclosed the block no.445 in serial no.1 of the schedule which property is the ancestral property of defendant no.10, block no.436 was the ancestral property of defendant no.18 and 19 and the said property has been sold by the predecessor of that defendant and handover the possession of the suit property to the purchaser and also stated that defendant no.1 to 4 has made sale agreement with the benefit, and the said sale deed in favour of plaintiff right of plaint to Lakshmanbhai Jerambhai Sonani and Dharmeshbhai S Patel and hence plaintiff has not got the possession of the suit property at any time before this sale agreement possession of the suit property was defendant no.1 to 4 and then after in the year 2011 Lakshmanbhai Jerambhai Sonani and Dharmeshbhai S Patel and defendant no.5 to 9 has got possession by way of sale agreement with the right of plaintiff, and hence plaintiff has not cultivated the said suit property, defendant further stated that plaintiff has not got the possession of the suit property and after receiving the sale consideration amount, as per the intimation of the plaintiff, defendant no.5 to 6 has executed the sale deed and hence as per the said contention of the plaintiff suit, and the said application is required to be rejected.

- 14 Plaintiff no.18 has filed affidavit vide exhibit-21, and Bharatbhai Jivanbhai Patel has filed affidavit vide exhibit-27.
- 15 After producing the said written statement the plaintiff has filed counter affidavit vide exhibit-44 and stated that he has read the written statement of the said defendant and denied the contention of written statement he has further stated that in this suit defendant no.1 to 4 has not filed written statement or reply of

injunction application, plaintiff has further stated that mark-3/1 has been executed in the presence of witnesses before notary officer and hence there is no-doubt raised regarding this document, plaintiff further stated that as per the para 13 of exhibit-14 which has been produced by defendant no.31, 33 to 35, 37 to 39 they had admitted the agreement of the sale in favour of plaintiff it means, defendant know very well the contention of the agreement inspite of that particular fact they have created false contract and document.

16 Defendant no.48 to 50 has produced the reply regarding amended suit vide exhibit-65 and as per this reply, plaintiff has filed counter affidavit vide exhibit-68 further support of the plaintiff's suit and this application. Plaintiff has filed the documentary evidence .

17 Plaintiff relied the Judgment of Honble Supreme Court as well as Honble High Court which discussed as below.

18 2011 (0) AIJEL HC 226232 Maheshbhai Chaganbhai Patel Vs. Jarin Naushir Dalal D/o Jalambhai Rustamji, as per this judgment appellant who is the original plaintiff has filed the suit agreement to sale between the parties subsequently original owner entered petition agreement to the sale with another person and hence plaintiff has filed suit for the specific performance of the agreement to sale and also filed an application for interim injunction. Original land owner sold the land by way of registered sale deed to defendant no.7 to 12 and on that case application of the interim injunction has been dismissed. Which has been challenged by the plaintiff on that case Hon'ble Gujarat High Court has held that Trial Court has not properly appreciated the provision of Section 53-A of the Transfer of Property Act,

mala fide intention on the part of defendants case pertaining of the immovable property and wherein triable issues are there and in such cases to avoid creation of third party rights and avoid multiplicity of the cases the status quo on the date of filing of the suit directed to be maintained.

- 19 Plaintiff also relaying the Judgment of Hon'ble Supreme Court 2010(0) AIJEL Supreme Court 48205 S.Kaladevi Vs. V.R.Somasundaram on that case the plaintiff has filed suit for the specific performance of the contract where the deed not registered and defendant has stated that the deed was obtained fraudulently by stating that it was agreement to sale, unregistered sub-deed tendered in evidence trial Court held it to be not admissible in the evidence, High Court dismissed revision petition against the order of the trial Court and hence Hon'ble Supreme Court has held that, court below erred in not accepting unregistered sale deed, it was proof of oral agreement of sale and not proof of completed sale deed, when unregistered sale deed is admitted in evidence, in suit for specific performance as evidence of contract, provision of the Act, 1908 are not affected on that case "The issue before us is only with regard to the admissibility of unregistered sale deed dated 27.02.2006 in evidence and therefore it is neither appropriate nor necessary for us to consider the contention raised by learned counsel for the respondent about the maintainability of suit as framed by the plaintiff or the circumstances in which the sale deed was executed. If any issue in that regard has been struck by the trial court, obviously, such issue would be decided in accordance with law. Suffice, however, to say that looking to the nature of the suit, which happens to be a suit for specific performance, the

trial Court was not justified in refusing to admit the unregistered sale deed dated 27.02.2006 tendered by the plaintiff in evidence." for that purpose in this suit also the sale agreement which has been produced by plaintiff is not registered.

20 2015 (0) AIJEL Gujarat High Court 234574 Baldevbhai Atmaram Patel Vs. Savitaben W/o Shivabhai Keshavlal Patel, looking to the said judgment land in question transacted by respondent no.1 to 4 in favour of another respondent and later on land sold out, suit for specific performance of agreement to sale and permanent injunction has been filed and also filed an application for interim injunction by plaintiff which has been dismissed and it was challenged by plaintiff on that case Hon'ble Gujarat High Court has held that claim of the petitioner or plaintiff based upon unregistered agreement to sale, while the document which is required to be registered is unregistered, it would not be admissible in evidence under Section 49 of the Registration Act, but such unregistered can be used as an evidence of collateral purpose. No dispute about the execution of the agreement to sale, error committed by the Trial Court as well as Appellate Court by arriving at no prima facie case in favour of petitioner and was not in possession of the land in question. Petitioner paid entire amount of the sale consideration suit was filed within time limitation and hence impugned order set aside order of status quo passed.

21 2000(0) AIJEL Supreme Court 18208 Motilal Jain Vs. Ramdasi Devi, Where appellant entered into contract with the defendant to purchase the suit property for a consideration of Rs.25,000/- out of which the sum of Rs.17,000/- was paid appellant alleged that the defendant was evading to receive the balance amount, he

executed the sale deed, the appellant sent notices through his advocate appellant then filed the suit praying for a decree of specific performance of contract for sale of the suit property and claim in the alternative damages averments in the plaint showed his readiness and willingness to perform his part of the contract and hence held merely because the appellant claims damages in a suit for specific performance of contract as alternative relief, it cannot be said that he is not entitled to the main relief from the specific performance of contract itself on fact appellant was entitled for specific performance of the contract.

- 22 2013(0) AIJEL HC 229210 Taraben D/o Nanubhai Kasanbhai Patel W/o Navinkumar Patel Vs. Shaileshbhai Rangilbhai, Where High Court has held granting of the injunction as a matter of discretion balance of convenience and irreparable injury are triable issue and required to be examined and positively found, Appellate Court is not expected to interfere with discretion unless it is shown that power has been exercised arbitrarily, capriciously or in perversity and against settled Principle of law, if board principle with regard to grant of injunction provided under Order 39 Rule 1-2 are considered discretionary order does not call for any interference in facts, impugned order refer to these relevant aspects including criteria for grant of injunction, conduct of parties and also aspect of prima facie case, balance of convenience etc. therefore, it does not call for any interference lastly.
- 23 2012(0) AIJEL HC 226493 Amrutbhai Nazabhai Chavda Vs. Valjibhai Palabhai Chavda, where the plaintiff has filed suit for the specific performance of the agreement to sale decreed- contended that the premises were given to plaintiff for

residential purpose and not for sale agreement to sale not registered no explanation as to acceptance of consideration Trial Court's findings that agreement to sale was not required to be registered at the relevant time held no error committed by Trial Court in passing decree.

24 Defendant no.5 to 9 has produced his written argument regarding exhibit-5 vide exhibit-75 and defendant no.48 to 50 has filed his written argument vide exhibit-.

25 Plaintiff has produced following document in support of his plaint vide exhibit-3.

Sr. No.	Documents	Mark
1	Copy of the agreement of sale	3/1
2	Village form no.7/12 of block no.436	3/2
3	Village form no.7/12 of block no.440	3/3
4	Village form no.7/12 of block no.445	3/4
5	Village form no.7/12 of block no.418	3/5
6	Village form no.7/12 of block no.446	3/6
7	Village form no.7/12 of block no.434	3/7
8	Copy of registered sale deed no.746 of block no.436 situated village Siker	3/8
9	Registered sale deed no. 226 of Block no.440 at Siker	3/9
10	Registered sale deed no. 745 of Block no.445 at Siker	3/10
11	Registered sale deed no. 624 of Block no.418 at Siker	3/11
12	Registered sale deed no. 622 of Block no.446 at Siker	3/12
13	Registered sale deed no. 623 of Block no.434 at Siker	3/13
14	Notice of RTS appeal 15/2015 to 20/2015	3/14
15	Village form no. 7/2012 of block no. 436 situated Siker	3/15
16	Village form no. 7/2012 of block no. 440 situated Siker	3/16
17	Village form no. 7/2012 of block no. 445 situated Siker	3/17
18	Village form no. 7/2012 of block no. 418 situated Siker	3/18

19	Village form no. 7/2012 of block no. 446 situated Siker	3/19
20	Village form no. 7/2012 of block no. 434 situated Siker	3/20
21	Village form no. 7/2012 of block no. 417 situated Siker	3/21
22	Village form no. 7/2012 of block no. 441 situated Siker	3/22
23	Village form no. 7/2012 of block no. 442 situated Siker	3/23
23	Village form no. 7/2012 of block no. 443 situated Siker	3/24
24	Village form no. 7/2012 of block no. 444 situated Siker	3/25

26 Defendant no.5 to 9 has produced following document in support of his defence vide exhibit-77.

Sr.	Documents	Mark
1	Order of RTS Revision no. 33/2016	77/1
2	Order of RTS Revision no. 34/2016	77/2
3	Order of RTS Revision no. 35/2016	77/3
4	Order of RTS Revision no. 36/2016	77/4
5	Order of RTS Revision no. 37/2016	77/5
6	Order of RTS Revision no. 38/2016	77/6

27 Defendant 5 to 9 has also produced following documents vide exhibit-18

Sr.	Documents	Mark
1	Copy of the agreement of the sale dt. 31.12.2010	18/1
2	Copy of notice which has been published in Gujarat Mitra daily newspaper.	18/2
3	Copy of Gujaratmitra Daily newspaper	18/3
4	Public reply which has been given in Gujaratmitra Daily newspaper	18/4
5	Copy of the Daily newspaper of Divya Bhaskar	18/5
6	Public reply which has been given by plaintiff in Gujaratmitra Daily newspaper	18/6
	Reply which has been published Gujarat Guardian Daily newspaper	18/7
	Copy of RTS appeal no. 15/2015	18/8

	Copy of RTS appeal no. 16/2015	18/9
	Copy of RTS appeal no. 17/2015	18/10
	Copy of RTS appeal no. 18/2015	18/11
	Copy of RTS appeal no. 19/2015	18/12
	Copy of RTS appeal no. 20/2015	18/13

28 After filing the counter affidavit, plaintiff has further produced following document vide exhibit-52.

Sr.	Documents	Mark
1	Registered sale deed no. 9/2017 regarding block no.434	52/1
2	Registered sale deed no. 10/2017 regarding block no.418	52/2
3	Registered sale deed no. 11/2017 regarding block no.446	52/3

29. As per above fact and circumstances following point for determination raised.

- 1 Whether plaintiff is a prima facie case?
- 2 Whether balance of convenience in favour of plaintiff?
- 3 Whether irreparable loss will suffer by plaintiff if no interim injunction granted?
- 4 What order?

30 Conclusion of the above point for determination are as follows.

1. Negative
2. Negative
3. Negative
4. As per order

::Reason for Conclusion::

Issue No. 1 to 3

31 All the Issue are interconnected and hence to avoid repetition only all issue discussed in one head.

32. As per the plaintiff's plaint, plaintiff has stated that Lallubhai

Vallabhbhai, Shankarbhai Lallubhai, Ramanbhai Lallubhai, Balwantbhai Lallubhai were legal owner of the suit property and hence they have executed one agreement of the sale on dated 15.12.2010 and as per the said agreement the total consideration amount has been fixed by the parties amounted Rs. 3,60,45,000/- out of the said amount on the time of the sale of the agreement, plaintiff has paid 1,09,00,000/- and before executing the sale agreement previously, plaintiff had given Rs. 11,00,000/- to the original owner and hence, total amount Rs. 1,20,00,000/- has been paid by plaintiff to the original owner of the suit property and the said amount has been paid by plaintiff by cash mode, as per the condition which has been mentioned in sale of agreement, that after payment of the outstanding amount 10,45,000/- the original owner will execute the sale deed in favour of plaintiff but due to the dispute between the co-owner of the suit property the proceeding regarding execution of the sale deed has been not completed within a time.

33. As per the plaintiff's case, after some time, plaintiff has got received information regarding the sale of the suit property to another person and hence, plaintiff has filed this suit and along with this suit, plaintiff has filed this application to get temporary injunction regarding suit property and requested to give temporary relief to restrain the defendant not to sale the suit property to any other person.
34. As per the plaintiff's plaint, plaintiff has stated that original owner of the suit property has given the possession of the suit property to plaintiff in the year 2010 and hence, plaintiff has cultivated the suit property which is the agricultural land with the help of labour and hence suit property is under possession of

plaintiff inspite of that fact defendant has tried to restrain and disturb the possession of the plaintiff and hence plaintiff has filed this suit, plaintiff further stated that during the pendency of the suit, defendant has sold the suit property to another defendant and hence they have joined all the persons as a defendant. Defendant no.5 to 9 has filed written argument under exhibit-75 and argued that, before the agreement of the sale deed dated 15.12.2010, on dated 07.12.2010 plaintiff has agreed to sale the said property to Lakshmanbhai Jairambhai Sonani and Dharmeshbhai S Patel by way of oral sale agreement and also decided the price of the suit property is about Rs. 5,71,000/- per Bhiga(vingha) and hence plaintiff had also agreed with Lakshmanbhai Jairambhai Sonani and Dharmeshbhai S Patel, and the total consideration amount has been fixed Rs. 5,08,19,000/-and out of the said amount. Plaintiff had received Rs.11,00,000/- from Lakshmanbhai Jairambhai Sonani and Dharmeshbhai S Patel, they further argued that as per the agreement on dated 31.12.2010 the 40% amount Rs. 2,03,27,600/- had been paid and plaintiff had paid the consideration amount to original owner of the suit property out of the said amount thenafter on dated 31.12.2010, and plaintiff had made sale agreement to Lakshmanbhai Jairambhai Sonani and Dharmeshbhai S Patel has transfer all the rights , interest regarding suit property .

The said Satakhat has been registered before notary before Devchand B Patel on 02.01.2011 which has been produced vide mark-18/1 and given possession to the said person and hence plaintiff have no prima faice case regarding suit property. Once they have given the possession of the suit property to

Lakshmanbhai Jairambhai Sonani and and Dharmeshbhai S Patel after receiving the consideration amount on that circumstances, plaintiff have no right or title regarding the suit property.

35. Defendant no.5 to 9 also argued that plaintiff has given all the rights byway of sale agreement after receiving the consideration amount and hence, the contention which has been raised by plaintiff is totally false and vexatious and hence plaintiff suit is required to be rejected even plaintiff is not entitled to get any interim injunction regarding suit property.
36. Defendant no.48 to 50 has also argued that (written argument on dated 16.09.2019) that plaintiff has executed sale of agreement in favour of Lakshmanbhai Jairambhai Sonani and and Dharmeshbhai S Patel on dated 31 December, 2010 and as per the said satakhat-cum-agreement , the rights, interest has been transfered, on that circumstances, plaintiff have no right to file the suit even plaintiff has no possession and hence, suit is required to be rejected with cost.
37. As per the application vide ex 82 which has been allowed and heard oral argument of the Ld. Advocate Nakrani, learned advocate Nakrani has argued that the application of the exhibit-5 which has been produced by the plaintiff along with this suit is also treat as the argument of the exhibit-5, they did not argue further more outside the contention which has been narrated in exhibit-5.
38. After hearing both parties at first looking to the document which has been produced by the plaintiff mark-3/1, it is found that prima facie legal successor of Lallubhai Vallabhbbhai and Shankar Lallubhai-

Daxaben Shankarbhai Patel,
Kenishkumar Shankarbhai Patel and
Ramanbhai Lallubhai and

Balwantbhai Lallubhai has executed one sale of agreement in favour of Sanjaybhai Ishwarbhai Goshwami on dated 20 December, 2010, as per the said document they had agreed to sale the suit property amounted Rs. 3,60,45,000/- and as per the para 2 they have mentioned that Rs. 11,00,000/- already paid on dated 29.06.2010 and on the day of the agreement, they paid Rs.1,09,00,000/- it means total consideration amount Rs. 1,20,00,000/- has been paid by first party to second party and second party has received said amount and acknowledge it, in plain reading of the said document in para 3, party have agreed to pay the another outstanding amount within 12 months of the day of agreement and as per the para 6 they have agreed that after payment of the said amount, second party will execute sale deed in favour of first party and on breach of any condition as per the para 7, the another party is entitled to file suit before the Court for specific performance, here it is noted that as per the agreement neither plaintiff nor defendant has declared that any dispute between the co-owner of the suit property is available or not ?, even as per the said agreement name of another defendant no.5 to 9 also not reflected. As per the said agreement up to 20 December, 2011, first party is duty bound to pay the outstanding amount and after payment of the outstanding amount, second party will duty bound to execute the sale deed in favour of first party and hence prima facie, it is found that plaintiff is duty bound to pay the amount up to 20 December, 2011. Document mark-3/2 to 3/7 are non-disputed

and as per mark-3/8 Shantaben Jivanbhai, Jaikishan Jivanbhai has executed sale deed in favour of Babubhai Kalubhai Mangukiya and Pravinbhai Kalubhai Mangukiya on dated 09.11.2012.

39. As per Mark-3/9 Ramanbhai Lallubhai Patel, Balwantbhai Lallubhai Patel, Jamnaben Lallubhai Patel, Mahilaben Lallubhai Patel, Rekhaben Lallubhai Patel, Gitaben Lallubhai Patel, Urmilaben Lallubhai Patel, Daxaben Shankarbhai, Monikaben Shankarbhai, Kajalben Shankarbhai and Kenishkumar Shankarbhai has executed sale deed in favour of Anandbhai Kalubhai Mangukiya on dated 05.11.2012. As per the mark-3/10 Manubhai Khushalbhai who is the power of attorney holder of Bharatbhai Jivanbhai Patel has executed sale deed in favour of Babubhai Kalubhai Mangukiya and Pravinbhai Kalubhai Mangukiya on dated 09.11.2012.

40. As per the mark-3/11 Ramanbhai Lallubhai Patel, Balwantbhai Lallubhai Patel, Jamnaben Lallubhai Patel, Mahilaben Lallubhai Patel, Rekhaben Lallubhai Patel, Gitaben Lallubhai Patel, Urmilaben Lallubhai Patel, Daxaben Shankarbhai, Monikaben Shankarbhai, Kajalben Shankarbhai and Kenishkumar Shankarbhai has executed the registered sale deed in favour of Sanjaybhai Vanshrambhai Hapani and Nileshbhai Mansukhbhai Suhagiya on dated 16 June, 2012. As per the mark-3/12 Ramanbhai Lallubhai Patel, Balwantbhai Lallubhai Patel, Jamnaben Lallubhai Patel, Mahilaben Lallubhai Patel, Rekhaben Lallubhai Patel, Gitaben Lallubhai Patel, Urmilaben Lallubhai Patel, Daxaben Shankarbhai, Monikaben Shankarbhai, Kajalben Shankarbhai and Kenishkumar Shankarbhai has executed registered sale deed in favour of Sanjaybhai Vanshrambhai

Hapani and Nileshbhai Mansukhbhai Suhagiya on dated 16 June, 2012 and lastly.

41. As per the mark-3/13 Ramanbhai Lallubhai Patel, Balwantbhai Lallubhai Patel, Jamnaben Lallubhai Patel, Mahilaben Lallubhai Patel, Rekhaben Lallubhai Patel, Gitaben Lallubhai Patel, Urmilaben Lallubhai Patel, Daxaben Shankarbhai, Monikaben Shankarbhai, Kajalben Shankarbhai and Kenishkumar Shankarbhai has executed the sell deed in favour of Sanjaybhai Vanshrambhai Hapani and Nileshbhai Mansukhbhai Suhagiya on dated 16 June, 2012 and hence within a period of 3 years of the said sale deed on dated 13 April, 2015, plaintiff has filed this suit.

42. As per the sale deed mark-3/8 to 3/13, it is prima facie found that the owner of the suit property whose name was running in the revenue record has been sold the suit property after receiving the consideration amount, here it is noted that as per the 3/1, plaintiff is entitled to get the execution of sale deed from whose name has been recorded in the said document.

As per the argument to execute sale deed in favour of him but as per the document which has been produced vide exhibit-3, plaintiff has not produced any document to show that he is ready or was ready, and willing to pay the outstanding amount within a time limit. As per the sale deed the person who has purchased the suit property, his name entered in a revenue record which has been reflected in mark-3/15. As per the document which has been produced by plaintiff prima facie, it is not found that the possession of the suit property lies with plaintiff, even plaintiff has not produced any document to show that he is cultivating the suit property from 2010 even, plaintiff has not

produced any document to show that on the day of the filing of the suit property, suit property is under possession of him and hence as per the registered sale deed prima facie it is found that the person who has paid the consideration amount has got the possession of the suit property .

- 43 In this suit defendant no.1 to 4 who is the original owner of the suit has not filed written statement but the person who has purchased the suit property has filed the written statement and also filed written argument as per the written argument vide exhibit-75 and as per the written statement of Defendant no.5 to 9 has stated that before the agreement of sale dated 15.12.2010, on dated 07.12.2010 Lakshmanbhai Jairambhai Sonani and Dharmeshbhai S Patel has entered in the oral agreement with plaintiff and decide the total sell consideration amounted Rs. 5,08,19,000/- and also plaintiff has received 11,00,000/- and hence on dated 31.12.2010, plaintiff has got 40% amount Rs. 2,03,27,600/- and out of the said amount on dated 15.12.2010, plaintiff has paid the consideration amount of agreement of the sell to original owner and hence plaintiff have no possession regarding the suit property, here it is noted that as per the contention of the defendant no.5 to 9. It is admitted that document which has been produced by plaintiff vide exhibit-3/1 has executeed between plaintiff and Daxaben Shankarbhai Patel, Kenishkumar Shankarbhai Patel, Ramanbhai Lallubhai and Balwantbhai Lallubhai but the said four persons were not only the sole or independent owner of the suit property and another person are also the owner of the suit property. As per the said document the said person have agreed as per agreement to sale property without the possession. They have agreed to sale the

suit property but as per the said agreement they have not mentioned any particular fact regarding the possession of the suit property and hence contention of the plaintiff that he has got the possession of the suit property is not found correct.

44. No doubt as per the said document, original owner of the suit property has been executed the sale deed in favour of defendants and as per the defendant no.5 to 9 have admitted that plaintiff has paid the amount of the consideration to the four persons whose name mentioned in mark-3/1 and hence intentionally defendant no.1 to 4 not came before the Court and not filed written statement or reply regarding the suit property but as per the document, it is also found that possession of the suit property has been handed over to the defendant and hence there is no prima facie in favour of plaintiff.
45. As per the document which has been produced by plaintiff, it is prima facie found that Daxaben Shankarbhai, Kenishkumar Shankarbhai, Ramanbhai Lallubhai and Balwantbhai Lallubhai who is the defendant no.1 to 4 have executed agreement of sale which has been registered before notary on 20 December, 2010, the original owner has received the consideration amount but after agreement of the sale, the said defendant and another co-owner of the suit property has executed the sale deed in favour of another defendant and possession of the suit property has been handed over to person whose name mentioned in registered sale deed and hence at present another defendant who has paid consideration amount to original owner of the suit property have prima facie case but on the same time it is required to be noted that if plaintiff will succeeded in a suit on that circumstances the person who has purchased the suit property shall be subjected as

per the Section 52 of the Transfer of Property Act but it is not a meaning that the person who has purchased the suit will restricted to sale his property.

46 As per the revenue record not only the person whose name mentioned in mark-3/1 but also another person are the also co-owner of the suit property and without taking necessary detail enquiry in this stage , it is prima facie found that, plaintiff has entered in a sale agreement of mark-3/1 on that circumstances, plaintiff have no prima faice case even balance of convenience is not in favour of plaintiff as per the document which has been produced by plaintiff, it is also found that plaintiff entered in a sale of agreement in the year 2010 but not file suit for specific performance of a sale of agreement within 3 years of sale of agreement and hence original owner of the suit property has sold the suit property to another defendant. As per the above fact, plaintiff will not suffer irreparable loss if application not allowed on that circumstances, I conclude issue no.1 to 3 are negative.

47 No doubt plaintiff have no prima facie case but as per the mark-3/1, defendant no.1 to 4 has executed sale of agreement on that circumstances suit land shall be subjected to the out come of the suit land and Section 52 of the Transfer of Property Act shall apply and hence, it is required to give direction to all the defendants shall declare the transfer if any made by him in respect of the suit land during the pendency of the suit before this Court and hence, I pass following order.

:: ORDER ::

- 1 Plaintiff application for exhibit-5 is Reject.
- 2 It is directed to the Defendants,if any transction made by the any defendants in respect of the suit property shall be subjected

to the outcome of the suit and Section 52 of the Transfer of Property Act shall apply, and the defendants shall declare the transfer if any, made by him in respect of the suit property during the pendency of the suit before this court.

3 Cost of this application will bear by defendant no.1 to 4.

Singed and pronounced in the open Court today, the 1st the day of, June.2022

Date: 01/06/2022

Place: Vyara.

**(Arvindkumar Shivprasad Pande)
Principal Senior Civil Judge,
Tapi @ Vyara Code GJ 00854.**