

GJVD050026572017



IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
AT SAVLI, DIST:- VADODARA.

SPECIAL CIVIL SUIT NO.187 OF 2017

PLAINTIFF :- TAEI MAHENDI HUSEN FATEHBHAI
POA ABDUL RAZAK HAJI HABIB MEMAN
VS.
DEFENDANTS :- JAVAHARBHAI DAHYABHAI PATEL + 2

APPEARANCE:-

Ld. Advocate Mr. R.J.PUROHIT for the Plaintiff.

Ld. Advocate Mr. J.P.RAVAL for the Defendant no.1 & 2.

Ld. Advocate Mr. A.M.PATEL for the Defendant no.3.

ORDER BELOW EXHIBIT-05

1. This injunction application is preferred by the plaintiff under Order 39 Rule 1 & 2 of Civil Procedure Code seeking interim relief. Perused the application, perused the relevant documents produced by the parties. Heard the Ld. Advocates for either side.

Principal Sr. Civil Judge, Savli

2. Having heard both sides, this Court has gone through record of the suit. Before this Court pass any order in present application, it would profitable to state herein that, general proposition of law laid down by Hon'ble Supreme Court as well as Hon'ble Gujarat High Court that in order to claim prohibitory (temporary or permanent) injunction. It is necessary for the plaintiff prove prima-facie case, apart from establishing other two ingredients, namely, balance of convenience and irreparable loss/injury. It is require to note that, the grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — **(i) whether the applicant has a prima facie case; (ii) whether the balance of convenience is in favour of the applicant; and (iii) whether the applicant would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.**
3. Having above settled principles in mind, this Court has to find that whether plaintiff's prayer falls within ambit under which this Court can extend benefit of order of injunction in favour of plaintiff.
- 3.1. In this case, the plaintiff has approached this Court with a case that, sale-deed in his favour came to be executed on 08.04.1982 vide Registered No.449. This sale deed is alleged to be executed by the Defendant no.1. It is also the case of the plaintiff that despite of this fact, Power of Attorney of the Defendant no.1, the

Defendant no.2 has executed the sale deed in favour of the Defendant no.3 on 04.12.2010 vide registration no.2655. In this case, this Court has considered the Written Statement of the Defendant no.1. The Defendant no.1 in this Written Statement, more particularly in Para 9 has admitted that he has not given any right to execute the sale deed in favour of the Defendant no.3 to the Defendant no.2. The Defendant no.3 has filed reply vide Exhibit 14, in which he has stated that he has purchased this property from the Defendant no.2, he has executed sale deed in capacity of Power of Attorney of Defendant no.1.

- 3.2.** The fact remains the same that there are two sale deeds in favour of the plaintiff as well as the defendant no.3. Thus, this Court believes that doctrine of priority of sale-deed holds great significance in this particular suit, in which two sale deeds are there. This Court believes that the plaintiff as well as the defendant no.3 requires to restrained from alienating or from creating right of any third party or putting any third party into possession of the suit property. This Court believes that when there are two sale deeds in the name of different other persons, same requires detail leading of evidence by examining validity of sale deed by this Court. Unless and until, same is concluded, none of the party can be allowed to transfer the suit property in the name of third party or none of the party can be allowed to put any third party into possession of the suit property. Thus, this Court believes that, if

such status quo order is not passed, then it will invite multiplicity of the proceedings which is not at all warranted.

- 3.3. Considering the facts of the suit is more than 10 years of old, if status quo is not granted, then there are all chances that either plaintiff or the defendant no.3 will carry on further transaction with regard to the suit property, which will ultimately prolong the proceedings of the suit. In this case, in the interest of justice for the foregoing reasons, this Court believes that, if status quo order is granted, then interest of justice will survive and both the sides will be able to lead their evidence to put forth the validity of either sale deeds and hence, the following order ensues:

:-: ORDER :-:

1. Both the parties, i.e. the plaintiff and the defendant no.3, are hereby restrained from carrying out any transaction by any means with regard to the suit property and to put any third party into possession of the suit property and thus, both the parties are hereby directed to maintain status quo of the suit property.
2. No order as to cost.

Order signed & pronounced in open court today on 5th April, 2025

Date:05.04.2025

Savli.

(Vikram Karsanbhai Solanki)

Principal Senior Civil Judge.

Ta:- Savli, Dist:- Vadodara

Judge Code :- GJ01099