

**IN THE COURT OF 27th ADDITIONAL SENIOR CIVIL
JUDGE AT VADODARA.**

SPECIAL CIVIL SUIT NO. 253 OF 2019

ORDER BELOW EXH.5

- 1]** Read the application. Heard the Ld. Advocate for the plaintiff.
- 2]** The Plaintiff has filed this Suit for specific performance of agreement to sale in respect of property bearing Record No.17/1, Block-A, admeasuring 188.12.92 Sq.mt., situated in city survey No. 47/1, of Yakutpura Area, behind 'Yakutpura Chora' (for sake of brevity hereinafter referred to as "disputed property") against the Defendants alongwith this interim injunction application.
- 3]** As the present Order is passed below Exh.5, the facts stated in the interim injunction application are not re-narrated.
- 4]** Summons/Notice of the suit is duly served upon the defendants and they have appeared through their Advocate and filed Vakalatnama at Exh.-6. The defendants were given sufficient opportunities to file the written statement but the defendants have not filed the same, therefore, their right to file written statement was closed on 04.01.2020.

- 5]** The Plaintiff's Advocate Mr. N.J.Mishra has filed an interim injunction application at Exh.05 and prayed for allowing the present application as the Plaintiff has prima-facie case and balance of convenience is in favour of the Plaintiff and if the injunction is not granted in favour of the Plaintiff, in that case, the Plaintiff has to suffer irreparable loss.
- 6]** In support of his case the Plaintiff has produced documentary evidence from Mark 4/1 to 4/10.
- 7]** Considering the facts of both sides, the following points arise for my determination to decide injunction application Exh.5.
1. *Whether the plaintiff proves that he has prima-facie case ?*
 2. *Whether the plaintiff proves that balance of convenience is in his favour ?*
 3. *Whether if, injunction would not be granted as prayed for in favour of plaintiff then he would be suffered irreparable loss / injury which can not be compensated in terms of money?*
 4. *What order ?*
- 8]** My findings on the above points are as under :-
1. In the Affirmative.
 2. In the Affirmative.

3. In the Affirmative.
4. As per Final Order.

:: R E A S O N S ::

ISSUE NOS.1 TO 4 :

- 9] At the outset, it may be mentioned that for the sake of convenience, all the above issues have been discussed together.
- 10] *The issuance of injunction is governed by Order-39 of the C.P.C., Rule-1 & 2 is also there and sometimes, Sec.151 of the C.P.C. is also required to be invoked. In short, first of all, if we look at the provision of Sec.151 of C.P.C., it appears that this provision is a statutory provision regarding the inherent powers of the Civil Court. It is merely a procedural provision which enables a party to have the proceedings of pending suit conducted in a manner consisting with justice and equity. The cases and circumstances arise which are not covered by expressed provision of the Statute, where justice has to be done. In such case, the Court is guided by its inherent powers relying on the principles of justice, equity and fair - play. However, no Court can have any inherent power to invest its shall with the jurisdiction not conferred it by the law nor it can create substantive right for either of the parties. The inherent jurisdiction can be exercised when the Court has*

jurisdiction and parties' right is clearly shown. Now, looking to the provisions of Order-39, Rule-1 & 2, it appears that Rule-1 of Order-39 of the C.P.C. envisages is granting of temporary injunction when there is a question for dis-possession thereof. Rule-2 of Order-39 of C.P.C. lays down the procedure for issuance of injunction for restraining breach of contract or other injury of any kind. Moreover, the provisions of Rule-1 & 2 of Order-39 lay down the circumstances under which, a temporary injunction can be granted and unless these circumstances exists, the Court has no jurisdiction to grant it, but the fact that these circumstances exists does not compel the Court to grant it in all cases in as such as, the Rule only shows that in the cases mentioned therein, the Court may grant an injunction. Thus, the granting of an injunction under the Rule is purely within the discretion of the Court. The grant of injunction is a very serious matter and Court should always take good care to grant an injunction in cases only where such an injunction is essential. It being an equitable relief, it would be refused to the person who himself has failed to do equity. The principle govern the exercise of the discretion are to be effected; firstly, there should be a serious question to be tried in the suit and that on the facts before the Court, there should be probability of an applicants being entitled to the relief asked for by him. Secondly; that the Court's interference

is necessary to protect him from that species of injury which the Court calls irreparable before legal right can be established on trial and thirdly; that the comparative mischief or inconvenience which is likely to arise from withholding the injunction will be grater than that which is likely to arise from granting it. The first of the above condition is what is generally termed as a (prima facie case) i.e. in other words, prima facie existence of right and its infringement, but the existence of a prima facie case alone is not by itself sufficient. The plaintiff should further satisfy the second condition by showing that irreparable injury will accrue to him, if the injunction is not granted and that there is no other remedy open to him by which, he can protect himself from the consequences of apprehended injury. The term "irreparable injury" The term "irreparable injury" only means that the injury must be material one i.e. one that cannot adequately compensated for damages. The third condition is what is called "balance of convenience". In applying these principle, the Court should compare amount of substantial mischief likely to be done to the applicants, if the injunction is refused and also compelled it which is likely to be caused to the other side, if the injunction is granted. Even where, all the above conditions are satisfied, a temporary injunction nevertheless be refused for the other reasons.

11] First of all, it transpires from the relief clause of the

plaint that the plaintiff has filed the present suit for specific performance of an agreement to sale to execute sale-deed in favour of the plaintiff from the defendants. Alternatively, the plaintiff has prayed that, if the defendants fail to execute sale-deed in favour of the plaintiff, in that case, the sale-deed be executed in favour of the plaintiff by appointing Court Commissioner. Further, the plaintiff has sought the relief that, the defendants be restrained not to transfer, alienate, sell, mortgage, gift the disputed property in favour of the third party and also not to create any charge/lien over the disputed property.

- 12]** In support of his suit, the plaintiff has adduced agreement to sale at Mark 4/2, from which, it is crystal clear that, the said document is registered at Sr. No. 2455 on 21.04.2018 with the Office of Sub-Registrar, Vadodara and the defendants have signed the said document in presence of Sub-Registrar. On meticulous examination of the aforesaid document, it transpires that, the disputed property was decided to sell on total consideration amounting to Rs.12,00,000/- (Rupees Twelve Lacs Only), out of which, the plaintiff has paid part payment in the tune of Rs.10,00,000/- (Rupees Ten Lacs Only) intermittently in cash. Further, it transpires from the said document that, the defendants have acknowledged the receipt of Rs.10,00,000/- being the part payment received towards the sell of disputed

property. Further, it transpires from the condition No.4 of the agreement to sale that, the possession of the disputed property will be handed over to the plaintiff by accepting the remaining consideration. In this context, it transpires from the plaint that, the plaintiff has categorically mentioned that, he is ready and willing to pay remaining consideration of the disputed property. It transpires from Mark 4/3 and Mark 4/4, sale-deed and index of the disputed property, respectively, that the disputed property has been running in the name of defendants. It is needless to mention here that, it is an admitted position on behalf of the plaintiff that, defendants are the owners of the disputed property and also possession of the disputed property lies with the defendants.

- 13]** Furthermore, the plaintiff has adduced Mark 4/5, Notice dated 30.03.2019 issued to the defendants, from which, it is crystal clear that, the same was issued for the compliance of conditions of the agreement to sale levied upon the defendants. Further, it transpires from the said Notice that, the plaintiff has sent a cheque bearing No. 273579 of Rs.2,00,000/-, drawn on State Bank of India, in favour of Goswami Bhaveshgiri Jagdishgiri (defendant No.1) being remaining payment to meet with the total consideration. It transpires from the Mark 4/7 and 4/10, acknowledgement receipts of RPAD Post respectively, that the Notices were duly

served upon the defendants. It is needless to mention here that, neither the defendants have replied the plaintiff's Notice in order to comply with the demand of Notice nor performed the conditions levied upon the defendants.

- 14]** Considering the aforesaid material on record, it transpires that, the plaintiff has prima-facie case as the defendants have executed registered agreement to sale in favour of the plaintiff by accepting part payment in the tune of Rs.10,00,000/- intermittently in cash from the plaintiff and if the disputed property is transferred/alienated in favour of third party, plaintiff has to suffer irreparable loss. Further, this Court is of the considered view that, the balance of convenience is also in favour of the plaintiff considering the contents of the plaint and the documentary evidence on record.
- 15]** In view of the aforesaid discussions and material available on record, this Court is of the view that, the plaintiff has succeeded to prove Issue No.1 to 3, therefore, the same are replied in the affirmative and in reply of Issue No.4, in the interest of justice, following Order is passed:

:~: O R D E R :~:

- (1) The plaintiff's present Injunction Application at Exh.5 is hereby allowed.

Special Civil Suit No.253 of 2019.
Order Below Exh.5.

- (2) It is hereby ordered that the defendants are restrained not to transfer, alienate, mortgage, gift or sell the disputed property to any third party and also the defendants are restrained not to create charge or lien over the disputed property till final disposal of the suit.
- (3) No Order as to costs.

Signed and pronounced in the open Court today on this 10th day of January, 2020 at Vadodara.

Date : 10/01/2020.
Place : Vadodara.

[Kiritkumar Babubhai Vaghela]
(GJ-01142)
27th Addl. Chief Judicial Magistrate,
Vadodara.

//S.M.Chauhan//