

SPECIAL CIVIL SUIT NO.306 OF 2013.**ORDER PASSED BELOW EXH.- 5.**

- 1] Read the application and heard the Ld. Advocate of the plaintiff and also produced written arguments vide Exh.23, which I have taken into consideration and also heard Ld. Advocate of the defendants and the defendants have produced written arguments vide Exh.28, which I have taken into consideration.
- 2] The suit property of Block No.295, Old Survey No.268 and 269 ad measuring Hr.2-25-94 sq. mts. of the sim of village Jaspur, Dist.: Vadodara (*hereinafter referred as suit property*). The present suit is filed for to cancel registered Sale Deed and to get declaration and to get permanent injunction against defendants. To avoid repetition, the contents of Exh.5 application is not discussed again here. I have taken into consideration the documents produced vide documentary evidence list at Exh.4 and 27.
- 3] Summons / Notice are duly served upon defendants and

defendants have filed Written Statement vide Exh.20 and denied each and every allegations of the plaintiff in toto.

4] Considering the facts of both sides, the following points arise for my determination to decide injunction application Exh.5.

- *Whether the plaintiff proves that he has prima-facie case ?*
- *Whether the plaintiff proves that balance of convenience is in his favour ?*
- *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 ?*
- *What order ?*

5] My findings on the above points are as under :-

1. Partly in the Affirmative.

2. Partly in the Affirmative.
3. Partly in the Affirmative.
4. As per final order.

:: REASONS ::

Issue Nos.1 to 4 :

- 6] At the outset, it may be mentioned that for the sake of convenience, all the above issues have been discussed together.
- 7] The Ld. Advocate for the plaintiff has submitted his another arguments vide Exh.23. He has submitted that, the plaintiff is owner of the suit property and one Mr. Jayanti Soma @ Tikdo Parmar met him and said that, he will help him (Plaintiff) to sell 2 Vigha out of entire suit property at a rate of Rs.1 Crore per Vigha and meeting was arranged with Ravi Sharma, who is intended to purchase the suit property. Thereafter Mr. Ravi Sharma had told the plaintiff to execute an Agreement of Sale of Two Vigha land and

thereafter Mr. Ravi Sharma called the plaintiff at office of Sub Registrar, Padra and told plaintiff to sign certain places on prepared documents. As plaintiff is a illiterate person and keeping faith in the defendant No.2 signed the document. At that time, the defendant No.2 gave cheques to him and told that, in short time, he will come and pay Rs.50,00,000/- cash to the plaintiff. Thereafter the defendant No.2 did not contact plaintiff and on inquiry plaintiff came to the knowledge that, the defendant No.2 has made a fraud with him and obtained a registered Sale Deed in favour of the defendant No.1 of entire suit property. Actually plaintiff intended to Sell only 2 Vigha of land at Rs.2 Crores to the Defendant No.2 but the defendant No.2 has cheated him and made Sale Deed of entire suit property in the name of the defendant No.1. The defendant No.1 is not in position to pay an amount of Rs.2 Crores and after realising the plaintiff has lodged FIR against the defendants and Mamlatdar, Padra and investigation is going on. In short plaintiff is being cheated by the defendant No.2 and so to save his rights over suit property, present Exh.5 application is preferred. The plaintiff has prima-facie case

balance of convenience in his favour and if injunction would not be granted in favour of the plaintiff the plaintiff would have to suffer great irreparable loss, which can not be compensated in terms of money and requested to allow Exh.5 application.

- 8] The Ld. Advocate for the defendants have also submitted Written Arguments vide Exh.28 along with citation. He has submitted that, the plaintiff himself ready and willing to Sell the entire suit property and before the Mamlatdar, Padra, Vadodara, plaintiff is appeared and before signing Sale Deed and Mamlatdar had asked several questions to the plaintiff and plaintiff has given answers in affirmative. The scripts of Audio – Video recording is produced vide D.E. List Exh.27/7. After completion of questionnaire the plaintiff had signed the registered Sale Deed in favour of defendant No.1. He has further submitted that, the plaintiff has got some money by depositing cheques by the defendant No.2. Thenafter plaintiff has lodged FIR against defendant and stay order is passed by the Hon'ble High Court of Gujarat. The defendant has also filed FIR against the plaintiff in Padra Police Station. The plaintiff declares

himself as innocent and illiterate but now he is trying to Sell out suit property to Mr. Amit Bhavarlal Gaud and others and signed one Memorandum of Understanding and copy is produced vide Mark – 27/9. Mr. Pravin Ambalal Parmar has made an affidavit stating that, the plaintiff has sold out entire suit property and at that time he was present and signed as witness. Also Rakeshbhai Babubhai Vankar has made an affidavit to this effect. He has further submitted that, the plaintiff's sisters made different application in the office of Mamlatdar, Padra and plaintiff had realised that, he will not succeed in that proceedings, filed this suit only to grab more money illegally. Therefore he has requested to reject the present Exh.5 application. In support of his submission, he has relied upon following Judgment.

Reported in **2009 (0) AIJ-GJ 1297** in the case of ***Somiben @ Chimiben D/o. Naranbhai Kalabhai. V/s. Ukabhai Naranbhai Patel Karta of HUF.***

- 9] Now, considering the arguments of both sides and documents produced on record, it is an admitted fact that, originally entire suit property is purchased by him and he

was sole owner of the entire suit property. Now, as per allegations made by the plaintiff, it is an admitted position that, he went to office of Mamlatdar, Padra and signed on documents after giving reply of questionnaire made by Mamlatdar and he was in impression that, this dealing is only for 2 Vigha at a price of Rs.2 Crores. He has admitted that, he had received cheques of Rs.1,71,71,500/- and remaining Rs.50 Lacs is to be given by the defendant No.2. Meaning thereby the plaintiff has receiving some amount of consideration, while on the other side contended that, price is fixed for entire suit property and registered Sale Deed is executed for entire property. After some days of registered Sale Deed, the plaintiff has signed one MOU with Amit Bhavarlal Gaud and Rameshkumar Arjanbhai Shrinath for 9 Vigha at Rs.55 Lacs and copy is produced vide Mark – 27/9. There are criminal proceedings initiated against the defendants as well as plaintiff also. Therefore looking to the pleadings of the plaintiff and contentions of the defendants side, main dispute is that, whether price is fixed at Rs.2 Crore for 2 Vigha or entire suit property and it can only decided after taking evidence at length. The citation relied

upon by the defendants side is not applicable as the facts of that case and fact of present case are different one. So if order of granting of status-quo position at suit property then there will be no prejudice or any injury to any party. Hence, I reply issue No.1 to 3 accordingly partly in the affirmative and for Issue No.4, I pass the following order.

:: O R D E R ::

(1) The present Exh.5 application filed by the plaintiff is hereby partly in the affirmative and both the parties of this suit are hereby ordered and directed to maintain status-quo position of suit premises till final disposal of this suit.

(2) Cost will be the cause in the suit.

Signed and Pronounced in the open Court, today on this 17th day of December, 2016.

Date : 17/12/2016.
Place: Vadodara.

(Jayesh A. Dave)
18th (Ad-hoc) Addl. Sr. Civil
Judge, Vadodara.
Unique ID Code GJ00712