

Special Civil Suit No.21/2018

Order below Exhibit-5

1. The plaintiff has filed the present suit for cancellation of sale deed along with the application for interim relief to protect the subject matter of the present suit till the finalization of this suit.

2. The brief facts of the application for interim relief is that the plaintiff owned and possessed the plot bearing survey no.65 paiki, and was interest to sale the said property. With this intention, he published a notice in a daily newspaper, as a result of which the defendant no.2 and 3 approached him and showed their willingness to purchase the suit property. Both the parties consensus ad idem to purchase the suit property for a consideration amount of Rs.52,00,000/-. The defendant paid Rs.1,51,000/- as an earnest money and executed an agreement to sale. The plaintiff demanded remaining amount to be paid via cheque. Hence, the defendants agreed to hand over cheque of same amount at the time of execution of sale deed.

It is the submission of the plaintiff that defendant's advocate prepared a draft of sale deed, in which he mentioned that the remaining amount would be made by the cheque, but, when the sale deed executed and plaintiff got copy of it, he found that it was mentioned there in that copy of registered sale deed that payment of consideration for suit property was made in cash, though the defendants handed over cheque of same amount at the time of execution of the sale deed.

The plaintiff deposited cheque in his bank, but the same was returned unpaid, hence, he filed present suit along with application for interim relief to protect the suit property as well as his possession over the suit property.

3. As soon as the suit was filed, ex-parte interim relief was granted and defendants were duly served. They appeared and filed their written statement vide Exh.22 and 23, in which they denied the plaintiff's case and submitted that the consideration amount for suit property was paid in cash. The cheque was given only for security purpose which the plaintiff had to return to the defendants. But, the plaintiff did not return the cheque to the defendants, rather he deposited the same for encashment. They also submitted that they

have never met to the plaintiff and they were never agreed to sale or their purchase of any such plot. But, in written statement para 16, they submitted that they purchased the plot after making full payment of consideration and now, the plaintiff by making false and concocted submission trying to get back the property which they legally purchased and for which they are legally entitled.

4. In support of plaintiff's claim, he submitted following documents:

Mark	Particulars
4/1	Advertisement published in daily newspaper.
4/2	Allotment letter of society
4/3	Disputed satakhat no.2789
4/4	Disputed document no.4141
4/5	Cheque no.214421 issued by defendant no.2
4/6	Cheque return memo of Axis Bank
4/7	Cheque return memo of Nagrik Bank
4/8	Cheque no.214422 issued by defendant no.1
4/9	Disputed document no.4237
4/10	Police complaint made by plaintiff being FIR No.I/67/17
4/11	Complaint against defendant no.2 being FIR No.I/59/17
4/12	Complaint against Kanubhai Pandya being FIR No.I/63/17

5. No any documentary evidence has been produced on defendant side.

6. To determine the dispute existing between the parties at the interim juncture, following issues are appeared:

1.	Whether the plaintiff proves that he has strong prima-facie case in his favour?
2.	Whether the plaintiff proves that he has balance of convenience in his favour?
3.	Whether the plaintiff proves that he would get irreparable injury if refused from granting interim relief?
4.	What Order?

7. Findings of this Court on above stated issues are as follows:

1 to 3	In Affirmative.
4	As per Final Order.

8. Reasons for finding:

8.1 Issue nos. 1 to 3 are interconnected and hence, are discussed simultaneously.

It is pertinent to note that the power to grant temporary injunction in the discretion of the Court is powers vested in the Civil Court

under Order 39 of the Civil Procedure Code are discretionary powers which should be exercised reasonably, judiciously and should be based on sound legal principals. Injunction should not be lightly granted as it adversely affects the other side. It is legal maxim that '*actus curiae neminem gravabit*', which means that 'an act of Court shall prejudice no man'.

Hence, generally before granting an injunction, the Court must be satisfied about the following aspects as prima-facie case, irreparable injury and balance of convenience.

The first rule is that the application must make out a prima-facie case in support of right claimed by him. But before making out the prima-facie case, the plaintiff must show with the help of cogent evidence on record that he has any legal civil right in respect of the disputed issue which exists between the parties. The Court must be satisfied that there is a bonafide dispute which exists between the parties, which needs to be flased by try and proposition of evidence at length. A prima-facie case does not mean that the plaintiff must prove that he would be able to get final order in his favour, but a case which can be said to be established if the finding which is

laid in support of the same were believed. While determining a prima facie case, the relevant consideration is whether the findings as laid, it was possible to come out at the conclusion in question or not. Existence of prima-facie case does not mean prima facie title which has to be established on finding at the trial. The existence of the prima-facie right and interaction of the enjoyment of the property or the right is a condition of establishing a prima facie case.

Similarly, the plaintiff however has to establish that non-interference by the Court would result in an irreparable injury to the party seeking relief and that there is no other remedy available except one to grant injunction and he needs protection from the consequences of apprehending injury or dispossession. Irreparable injury does not mean that there must be physical possibility of repairing the same. But it is sufficient to see that the injury must be of material nature which cannot be adequately compensated by way of damage.

Third condition for granting interim relief is the balance of convenience must be in favour of the applicant. The Court must be satisfied that the comparative mischief, hardship or

inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

The above contentions of this Court also gets favour of the Hon'ble Supreme Court vide judgment passed in case of "Gujarat Bottling Company Ltd. Versus Coca Cola Company reported in (1995) SCC 545 at page No.574. The grant of interlocutory injunction during the pendency of legal proceedings is a matter requiring exercise of discretion of Court while exercising the discretion, the Court applies the following test.

1. Whether the plaintiff has prima facie case?,
2. Whether the balance of convenience is in favour of the plaintiff?
3. Whether the plaintiff would suffer an irreparable injury if his permitted for interlocutory injunction is disallowed?

The decision whether or not to grant interlocutory injunction has to be taken at a time when the existence of the legal right is assailed by the plaintiff, its alleged violation are both contested and uncertain and remained uncertain till they are established at the trial of the

evidence. Relief by way of interlocutory injunction is granted by mitigate, the risk of injustice to the plaintiff during the period before the uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated for damages recoverable in the injunction if the uncertainty were resolved in his favour at the trial. The need for such protection has however to be read against the correspondence need of the defendant to be protected against injury resulting to from his having been prevented from exercising his own legal right for which he could not be adequately compensated. The Court must weigh one need against another and determining "where the balance of convenience lies".

The phrases "Prima-facie case" "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity to meet myriad situations, presented by men's ingenuity in given facts and circumstances, hedged with sound exercise of judicial discretion to meet the ends of justice.

8.2 In light of above said discussion, considering the case of the plaintiff, the plaintiff came with a case that he owned and possessed a plot bearing survey no.65 paiki and defendants agreed to purchase the said plot. Parties entered into agreement to sale and after that, sale deed was executed. Plaintiff demanded the consideration amount to be paid by cheque. Hence, defendant no.1 handed over cheque for Rs.51,00,000/- signed by him. The cheque is produced vide Mark-4/5. But, when the sale deed was executed, it was mentioned there that the consideration was paid in cash. Plaintiff produced disputed sale deed vide Mark-4/8. The plaintiff deposited the cheque in his bank for encashment, but the same was returned unpaid. Return memo is produced on record vide Exh.4/6 and 4/7.

It is submitted by the plaintiff that defendants made fraud upon him and they did not make payment and changed the pages of sale deed with some false description.

Now, considering the written statement of the defendants produced vide Exh.22 and 23, it is submitted by the defendants that they never met to plaintiff nor they ever talked for any transaction of suit property. But, in the same written

statement, they mentioned in para 16 that they purchased the plot after making full consideration in cash. How these two contradictory incidents are possible? Further, it is submitted by defendant no.3 that she purchased the said suit property after making payment of Rs.52,00,000/- by cheque and purchased the said suit property from defendant no.1 and 2 vide a registered sale deed no.4237 on date 14/07/2017. The said sale deed is produced vide Mark-4/9 in which it is mentioned that defendant no.1 purchased the suit property from plaintiff vide registered sale deed no.4141 on 11/07/2017. If the defendant no.1 and 2 never met the plaintiff or never agreed to purchase the suit property, how they transferred the same property on just third day of the date on which alleged sale transaction is said to have been occurred between plaintiff and defendant no.1 and 2. Again, the plaintiff produced documentary evidence to show that the cheque issued for amount of Rs.52,00,000/- returned unpaid, whereas, the defendants submitted in their written argument that they handed over cheque for security purpose. Now, on one hand, defendant nos.1 and 2 deny the meeting with plaintiff and existence of any such transaction, but on the other hand, they submit that they purchased the suit property from plaintiff after making payment of full

consideration in cash and handed over cheque only for security purpose. But, no any documentary evidence i.e. bank statement has been produced on record to show whether they had such a handsome amount on their hand at the time when disputed sale transaction occurred. Again, the cheque (Mark-4/5) was presented for encashment on 06/10/2017 and returned unpaid for insufficient funds. The sale transaction occurred on 11/01/2017. If the defendants handed over said cheque only for security purpose and the plaintiff did not returned it to defendants even though they paid consideration of suit property in cash, defendants had to inform the bank for stop payment of said cheque for this reason. No any such averments are made in the written statement, nor any bank statement is produced on record to show that the defendants had such an amount in their bank, so that it can even be presumed that they would have paid in cash at the time of execution of sale deed.

Above said discussion makes it crystal clear that certainly, there is some foul play on the part of defendants hence there exists a dispute between the parties which require a meritorious disposal of this case. Hence, there exist a prima-facie case between the parties, as

well as balance of convenience is also in in favour of the plaintiff. Now, it is very clear from record of case that the defendant no.1 and 2 does not come with clean hands before the Court. The relief of interim injunction is relief granted under law of equity. Equity means equality should be maintained on both the sides. The plaintiff sold the property to defendant no.1 and 2 but, at this juncture, there is no any prima-facie evidence is brought on record by the defendants that they purchased the said suit property after making payment of full consideration in cash, whereas, the plaintiff put on record the prima-facie evidence that he did not get any amount as mentioned in the sale deed as cheque given by the defendant no.1 returned unpaid. Now, it is the subject of appreciation of evidence whether the defendant paid consideration to plaintiff or not, but at this juncture if interim relief is not granted to the plaintiff, it will only be the plaintiff who may suffer irreparable loss, if the suit property is further transferred by defendant no.3 to someone else. Hence, issue no.1 to 3 answered in the affirmative. At this juncture, this Court also discuss the citations as produced by the defendants in support of their written arguments. The judgments produced by the defendants are of Hon'ble Supreme Court and

Hon'ble High Court of Gujarat, hence are binding to this Court, but considering the facts and circumstances of the present case, it can be said that the guidelines as issued by the Hon'ble Supreme Court and Hon'ble High Court of Gujarat, though binding to this Court, cannot be helpful for the defendant's submission.

So far as issue no.4 is concerned, following order has been passed:

-: Order :-

1. Application for interim relief vide Exh.5 is hereby granted.
2. The parties to this suit are hereby prevented from transferring or alienating in any way the suit property either by himself or by their representatives, servant, agent or any other person acting under their authority till the finalization of suit.
3. There shall be no order as to costs at this juncture.

Pronounced on this 31st day of January, 2019.

Junagadh
Date: 31/01/2019

(Bindu Gopikrishna Awasthi)
2nd Addl. Senior Civil Judge,
Junagadh.
(GJ00810)