

ORDER BELOW APPLICATION AT EXH.5
IN SPECIAL CIVIL SUIT NO.110-2015.

[01] The plaintiff has instituted the suit for specific performance of oral agreement, declaration, and permanent injunction and along with the suit, made the present application for temporary injunction restraining the defendants, their agents, sub-ordinates, men, representatives, from disposing off, transferring, assigning, alienating the suit shops till final hearing and disposal of the suit. The short facts relevant for the disposal of the application are that;

The property two shops bearing shop No. D-225 & D-226 in Radha Krishna Textile Market at Ring Road, Surat bearing Survey No.4/2060 Paiki, 4/2065, 4/2066 Paiki, 4/5136 and 4/5139, situated in Nawabwadi Begumpura area in Sub-District, District Surat is the suit property (herein after shall be referred to as "Suit Shop"). The plaintiff is doing the business of Estate Broker in the city of Nasik (Maharashtra). The defendant No.1 & 2 are father-in-law and brother-in-law and defendant no.3 is the wife of the plaintiff respectively. Mrs. Mantra Omprakash kewalramani was the wife of the defendant no.1 and she has recently expired. Before the

marriage with the defendant no.3, the plaintiff was doing the job in a Dubai and stayed for few years with the defendant no.3. While staying at Dubai, the plaintiff had extended financial help to the family of his wife i.e. the defendant no.3 and paid Rs.20 Lacs by way of cheques from his own income in the manner mentioned in Para 3 of the plaint, but so far as entry no.6 is concerned, the amount of Rs.8 Lacs was made by the plaintiff, the details of which is not available with the plaintiff for the reasons that the defendant no.3 while living home of the plaintiff had carried out some documents belonging to plaintiff wherein details of above entries no.6 is reflected. The plaintiff has made the payment of Rs.20 Lacs to the defendants and their family members, and as harmonious relations and had trust on family of the defendant no.3 and the plaintiff had accepted the verbal and oral agreement of the defendants and as relations, the plaintiff did not bothered to obtain the receipts of all above payment made by him. However, the plaintiff was maintained account in his diary, which was taken by the defendant no.3 at the time of leaving the house. Thereafter, in the year 2006, there was heavy flood in Surat, and due to huge loss in agency of Pepsi India by the defendant no.2, the defendant no.3

were offered two shops against the loan of Rs.20 Lacs to plaintiff which were in the name of Mrs. Mantran Omprakash Kewalramani. Due to relations with the defendant no.3, the plaintiff has accepted the offer, hence oral agreement for the sale of shop against Rs.20 Lacs effected and the property would remain as property of the plaintiff and it would be transferred in the name of the plaintiff or in favour of other person, it may be desired and demanded by the plaintiff, this was a sort and oral agreement and all these facts were in knowledge of the defendant no.3 and due to harmonious relations, the plaintiff was never executed any documents regarding this transactions. It was also agreed by both the parties, the rent income of the said shops shall be paid to the plaintiff and as per request of the plaintiff, the said amount will be deposited in monthly saving policy in the name of the daughter of the plaintiff namely Bhavya, which was taken by the defendant No.1 and 2. Thereafter, the defendant no.1 i.e. father of the defendant no.3 was demanded more amounts from the plaintiff, but the plaintiff objected and reminded to execute the oral agreement, hence wife of the plaintiff i.e. the defendant no.3 decided to leave her matrimonial house, accordingly left the house with entire Stridhan and minor daughter

without the permission of the plaintiff and she has also bring all the documents like material books, account diary maintained by the plaintiff. The defendant no.3 has also filed false and frivolous litigations of ill-treatment, dowry demands against the plaintiff, and proceeding are pending before the Court of law. The defendants neither execute a sale deed in favour of the plaintiff nor ready and willing to pay back the amount of Rs.20 Lacs to the plaintiff. Hence, issue notice to the defendant on 08.11.2014 through his advocate to execute a sale deed of suit shops and specifically perform the oral agreement to sale in respect of the suit shop or return back his money with interest @24% p.a. and notice was duly received by the defendants. The defendants have tried to escape from their legal liability towards the plaintiff and called upon to produced the gift deed or anything in writing regarding so called gift of Rs.20 Lacs. Now, the defendants have changed their minds and they are not willing to abide all the terms of the oral agreement to sale and by mala-fide intentions to grab the property of the plaintiff after receiving full consideration amount. The defendant no.3 with her family have filed false complaint against the plaintiff under sec.498 (a) of the Indian Penal Code and under the Dowry Prohibition Act

for demanding Rs.10 Lacs from her parents toward dowry, hence they have misused the laws favoring ladies to harass the plaintiff and grab his property. The plaintiff has come to know from some reliable sources and from market to enter other buyers with intention to get the benefit of price rise of the suit shop. Therefore, the plaintiff has filed this suit to seek appropriate relief including the relief of injunction against the defendants.

[02] After duly served the summons and notice, the defendants have appeared through their Ld. Advocate and filed written statement vide.11 and denied all the facts and contentions of the suit and application of the plaintiff. It is further contended that from the beginning, the plaintiff has bad intention to grab the shops of the defendants and the plaintiff has helped to the defendants as family member, and they have not executed any papers for the transaction. Hence, on basis of such transaction, now the plaintiff is tried to snatch the rights from the suit shop of the defendants. Hence, by their written statement, the defendants have denying all the averment of the plaintiff and contending that plaintiff has no right to restrain them, consequently, prays to dismiss this application.

Arguments of both the sides have been heard which are discussed along with the reasons.

[03] Following issues for determination are arise to decide the present interim application.

I S S U E S:-

- (1) Whether the plaintiff has prima-facie case?
- (2) Whether, the balance of convenience is in favour of the plaintiff?
- (3) Whether, the plaintiff will suffer irreparable injury?
- (4) What order?

[04] My findings on the above issues are as under.

- (1) In negative.
- (2) In negative.
- (3) In negative.
- (4) As per final Order.

R E A S O N S:-

ISSUE NO.1 TO 3 :-

All the three issues are interconnected to each other and therefore to avoid the repetition of arguments and discussion of evidence, all the three issues are discussed conjointly for the sake of convenience and brevity.

L. Advocate for the plaintiff has argued that, the relation are not in dispute here. In spite of girl child, plaintiff has never insisted for the second child to defendant no.3. In the year of 2006, due to flood in Surat City, defendants have occurred a huge loss, hence they have asked for the financial help which is provided by the plaintiff. The acceptance of amount is never disputed by the defendants. The amount has been paid by way of various cheques. It is also argued that while leaving the house of the plaintiff, the defendant no.3 has collected some valuable documents of the plaintiff, and therefore, plaintiff is not having the documentary evidences, so far last entry No.6 as narrated in para. 3 of the plaint is concerned. It is also argued that it is agreed between the parties that the suit shops would be transferred in the name of the plaintiff against the amount

which he had advanced to the defendants if they will not repay the amount. It is also argued that the defendant no.3 has filed various criminal litigation against the plaintiff in different court of law. The stand taken in the written statement regarding the gifting the said amount is totally vague and false one. If, the plaintiff is in position to help defendants then why he would ask dowry to the defendant no.3. It is also argued that the total saving of the plaintiff is with the defendants, the amount which is given to the defendant has not shown as consideration but shown as gift by the defendants. At present, the plaintiff is not claiming the possession over the suit property. The relief regarding restricting transfer is required to be passed. The defendant no.3 has filed complaint under Domestic Violence Act against the plaintiff and his family members, in the D.V. proceedings, the Court has only issued notice to the plaintiff deleting his family members. Looking to the case of the plaintiff, he has strong prima-facie case, considering the securities of Rs.20 Lacs, the injunction is required to be granted in favour of the plaintiff. If injunction is not granted, and in the mean time, if the defendants would transfer the suit property, in that case, great harm and prejudice, which could not be compensated in terms of money

would occurred to the plaintiff. In this circumstances, necessary interim injunction is prayed by the plaintiff, relying upon the following decisions.

[1] SHIVRAM ANTAIAH SHETTY v. CHIMANLAL AMBALAL
AIR 1987 GUJARAT 30

[2] M/S SHIV SHANKAR GOEL v. THE MUNICIPAL COUNCIL
AJMER AIR 1997 RAJASTHAN 1976

[3] GADADHAR MISHRA v. SMT. BIRAJA DEVI
AIR 1999 ORISSA 226

[05] On the other hand, Ld. Advocate for the defendants have argued that the suit is filed with ulterior motive to pressurize the defendants, more particularly, the defendant no.3 who happens to be wife of the plaintiff. It is also argued that the suit is filed in the month of February 2015 and the reason is that in the month of November'2014, the defendants have issued a notice to the plaintiff produced at mark 3/2. It is also argued that looking to Para 16 regarding cause of action, it is not arise against the present defendants because, in said para. It is specifically stated that the

wife of the defendant no.1 shall execute the sale deed, who is not the party to the present suit. It is also argued that looking to the documentary evidence produced by the plaintiff at mark 3/1, the wife of the defendant no.1 is the party, in the notice. When the suit is filed, the wife of the defendant no.1 has been deleted by the plaintiff. It is also argued that the person who is holding the title of the suit property has not been joined by the plaintiff, while filing of the suit. The suit is based by producing two documents and both are notices. It is also argued that no documents regarding showing the title of the suit property has been produced by the plaintiff. It is also argued that the said amount, were received till 04.08.2005, considering that date also, the present suit is totally time barred. It is also argued that the suit is filed on the base of oral agreement, without any documentary evidence. Because the suit is time barred, the plaintiff has created the story of oral agreement between the parties. It is also argued that looking to the relations between the parties, just to pressurize the defendant no.3, so that she may succumbed to the compromise in criminal proceeding, the plaintiff has filed this vexatious suit. The defendant has produced the documentary evidence by which, it is clearly establishes that the

defendant no.3 has filed a complaint of domestic violence act against the plaintiff, she has also filed an application for claiming maintenance under sec.125 of Cr. P. C., she has also filed complaint under sec.406, 420, 498 (A), 504, 506 (2), 114 of I.P.C. and under the Dowry Prohibition Act sec.3 and 7. The issuance of the notice, only against the plaintiff no.1 deleting his family members by the J.M.F.C Court has also been challenged by the defendant no.3 with delay application. Just to counter blast the above litigation, the suit is filed by the plaintiff. All the proceedings have been initiated by the defendant no.3 in the year 2014, while the suit is filed in the year 2015. Thus, the suit is nothing but abused the process of law and therefore, it is argued that the plaintiff has no prima-facie case. If the injunction is granted, in that case, great harm and prejudiced would occurred to the defendants, which cannot be compensated in terms of money. The judgment which are produced by the plaintiff are not applicable, looking to the facts of the present case, and therefore, it is prayed to reject the injunction application with cost.

[06] I have gone through the rival submission of both the sides, it is

pertinent to note that the relations between the parties are not much in dispute here. The defendant no.3 is the wife of the plaintiff. Perusing the plaint, it transpires that from 28.08.2004 till 04.08.2005, the plaintiff has advanced financial assistance to the defendants, more particularly, the defendant no.1 and 2 and to the wives of both the defendants and to the daughter of the defendant no.2. Upon perusing the pleading of the plaint, the suit property was stood in the name of Mrs. Mantran Omprakash Kewalramani who has been expired, she has never taken any financial help from the plaintiff. More over, looking to the last date of the payment i.e. 04.08.2005, the contentions of the defendant regarding expiry of limitation for the recovery of the said amount is also required to be taken in to consideration at this juncture. It is also pertinent to note here that looking to the notice produced by the plaintiff at mark 3/1, Mrs. Seema Amit Kewalramani was the party in the said notice, who has not been joined by the plaintiff as co-defendant. No documents have been produced by the plaintiff to show that after the death of Mrs. Mantra Omprakash Kewalramani the suit property were transferred in the names of defendant no.1 and 2. The base of the suit is the oral agreement against the financial assistance, at this

juncture when the property stood in name of third party who has not taken any financial assistance from the plaintiff, such property is not required to be restricted in any manner. Plaintiff has stated that due to flood in Surat city, defendants have incurred a huge loss in the business, and at that time the two shops were agreed to be given to plaintiff in lieu of his money, that statement itself is full of doubts because looking to the last date of cheque i.e. 04-08-2005, financial aid completed prior flood. Here, the amount which is received by the defendants is not in dispute. When healthy relation prevailing in the family and looking to the bonding, there may be a occasion of financial help / assistance to the in-laws or family members but if one would come with a case that it is against some property then some proof requires to believe that fact, which is not found in the present case. It is also pertinent to note that the defendant no.3 has filed various criminal litigation against the plaintiff in different courts of law. The said litigation where filed prior filing of the suit, till filing of the said criminal litigations, no notice has been given by the plaintiff disclosing the facts of the suit and therefore, the argument regarding the filing of the suit as counter blast just to pressurize the defendant is also required to be taken in to consideration. Not a

single document has been produced by the plaintiff showing his advance against the suit property on the base of oral agreement. The plaintiff has even not filed any single affidavit of his any family member / relative acquainted with the facts supports the case of the plaintiff. In this circumstances, the plaintiff has no prima-facie case, balance of convenience is also not in favour of the plaintiff, when the properties stood in name of third party who is not a party to the suit, no injunction is required to be granted. The judgments which are produced by the plaintiff are not applicable, looking to the facts of the present case. In the case of **SHIV RAM**, plaintiff was in possession of suit shop, while here no such possession of the plaintiff has been established and therefore, the base of oral agreement in that case is not applicable to the case on hand.

In the Case of **M/s SHIV SHANKAR** that Court was of the opinion that the disputed questions of fact can be adjudicated in the suit after leading the evidence by the parties, as discussed here in above, looking to the facts of the present case, and looking to the pleading of the plaintiff, adjudication as alleged by the plaintiff regarding oral agreement is disbelieved at this juncture by this Court by citing reasons as stated here in above and therefore the

said judgment is not applicable to the facts of the present case.

As discussed herein above, the plaintiff failed to prove his prima-facie case and therefore, the judgment of **GADADHAR MISHRA** is not applicable. In these circumstances, the reply of all the three Issues are given in negative accordingly. To decide present application below Exh.5 as well as Issue No.4, I do hereby pass following final order in the interest of justice.

FINAL ORDER

- ➔ The Application is hereby dismissed. The Notices issued below Exh.5 is hereby discharged.
- ➔ Cost shall follow the final outcome of the suit.

Order pronounced today in open Court at Surat on this
10th day of **March 2016**.

(Prashant Narendrakumar Raval)
10th Addl. Senior Civil Judge, Surat
UI Code No.GJ00708