

GJAH020076252025



**IN THE CITY CIVIL COURT AT AHMEDABAD
CIVIL SUIT NO.427 OF 2025**

Order below Exh.6-7 (Notice of motion application)

1. The plaintiffs have filed the suit for specific performance of contract and injunction.
2. The brief facts of the present case is as under:
 - (a) Deceased Samir Rajkumar Sharma (predecessor of the defendants) agreed to sell his legal share in the suit property situated at Dist, Sub Dist: Mouje-Dariyapur-Kajipur, Ahmedabad, T.P. Scheme No. 14, Final Plot No. 155, known as Bombay Textile Industries, admeasuring about 2073 sq. mtrs. with construction thereon, to his close friend and classmate, deceased Danish Munishbhai Qureshi (husband of plaintiff No. 3 and father of plaintiffs No. 1 and 2).
 - (b) A registered agreement to sell was executed on 17.08.2020 for a total sale consideration of Rs.75,00,000/-, out of which Rs.10,00,000/- was paid by deceased Danishbhai Munishbhai Qureshi via cheque No. 000098 dated 17.10.2020 drawn on Kotak Mahindra Bank, Shahibaug, Ahmedabad, leaving a remaining balance of Rs.65,00,000/- to be paid at the time of execution of the registered sale deed, which was agreed to be executed after obtaining the title clearance

certificate.

- (c) Deceased Samir Rajkumar Sharma initiated title clearance proceedings, assured division of property, and promised in writing that signatures of all legal surviving heirs would be obtained upon execution of the registered sale deed as the share was inherited from his deceased father Shivram Sharma.
- (d) Deceased Samir Rajkumar Sharma fell ill, proceedings were delayed due to the COVID-19 pandemic, and he subsequently passed away in 2023; thereafter, the plaintiffs approached his mother and defendant No. 2, who continuously assured cooperation and acceptance of the remaining amount.
- (e) Upon noticing family disputes among the defendant's family members, deceased Danish Munish Qureshi served a notice dated 15.09.2023 upon defendants No. 1 and 2 expressing readiness and willingness to perform his part of the contract, which was received by them but left unanswered.
- (f) Deceased Danish Munish Qureshi suffered a heart attack in 2024 and passed away on 23.02.2025, leaving plaintiff No. 1 (a 15-year-old minor represented by mother/guardian plaintiff No. 3) and plaintiffs No. 2 and 3 in hardship; plaintiff No. 2 recently requested defendant Nos. 1 and 2 to execute the registered sale deed as ample funds were available, but the defendants rejected all lawful demands.

(g) It has come to the knowledge of the Plaintiffs No. 2 and 3 that the defendants intend to dispose of the suit property, and upon approaching them to either execute the registered sale deed or return the entire amount with interest as per the agreement to sell, the defendants turned down all demands, leading to the filing of the present suit and application.

3. Ld. Advocate for the plaintiffs has also filed a purshish at Exh.9 stating that, in the event of grant of injunction, if the defendants suffer any irreparable loss, the same shall be compensated by the plaintiffs.
4. On presentation of the Notice of Motion Application, this court has issued summons to the defendant No.1. Despite service of summons, the defendant had neither appeared before this court nor filed any reply. Therefore, the rights of the reply and rejoinder affidavit filed on behalf of the defendant No.1 were closed.

The defendant No.2 has filed reply at Exh.17, wherein, he has objected to the notice of motion application and submitted that the allegations, submissions, and contents of the Plaintiffs' suit and injunction application are entirely denied, false, fabricated, baseline, and unsupported by any legal evidence.

(a) The suit property was originally jointly owned by late Ramshriben alias Vidhyaben, late Rajkumar Siyaram Sharma, and Defendant No. 2, Vijaykumar Siyaram Sharma. By virtue of a registered Will dated 30.01.2010, late Ramshriben bequeathed her 298 sq.m.

portion to Defendant No. 2. Following her passing on 05.01.2012, Defendant No. 2 became the absolute legal owner of a total area, duly mutated in the City Survey records under Entry No. 9602 on 12.10.2018. Defendant No. 2 maintains exclusive physical possession of this property and independently runs a printing business named "Print Express" with his wife.

(b) Following the intestate demise of Rajkumar Siyaram Sharma on 30.12.2005, his undivided 371 sq.m. share devolved jointly upon his four legal heirs—his wife Rajniben (Defendant No. 1), his son late Samirbhai, and his two daughters. Consequently, late Samirbhai possessed only an undivided 1/4th interest within that specific 371 sq.m. portion and had no legal right, title, or authority to execute an agreement to sell or alienate the entire suit property.

(c) Furthermore, owing to late Samirbhai's continuous irresponsible behavior and financial dealings, his mother (Defendant No. 1) severed all ties with him in 2016, disowning him from all family properties and issuing a formal Public Notice in the daily newspaper Gujarat Samachar on 28.05.2016, to warn the public against entering into any transactions with him.

(d) The present suit, instituted on 08.05.2025, seeking specific performance of the alleged 2020 agreement, is barred by the law of limitation, laches, and acquiescence. It also suffers from serious legal flaws, including the non-joinder of necessary legal heirs,

failure to produce Samir's pedigree tree, non-receipt of the alleged legal notice dated 15.05.2023, deficient court fee stamping, and the statutory bar under Section 34 of the Specific Relief Act, 1963.

- (e) The plaintiff and associated entities are speculative litigants engaged in purchasing disputed claims, as evidenced by multiple parallel suits (Civil Suit Nos. 424/2025, 425/2025, 426/2025, and 468/2025) filed against the family based on similar alleged transactions with Samirbhai.
 - (f) The plaintiff has failed to demonstrate a prima facie case, balance of convenience, or irreparable injury. Granting an injunction would inflict severe financial damage and hardship on Defendant No. 2, rendering the plaintiff's suit and temporary injunction application liable to be dismissed with compensatory costs. Hence, the defendant prayed to dismiss the plaintiff's notice of motion application with costs.
5. Heard the Ld. Advocates for the parties. Perused the Notice of Motion, reply filed by defendants, arguments filed by both the parties, documents produced on record and the averments made therein.
 6. Heard the Ld. Advocates for both the parties and perused the material on record, going through the documentary evidence submitted by both the parties along with the arguments advanced by the Ld. Advocates for both the parties. To obtain an order of temporary injunction

application, the plaintiffs established three grounds, i.e., prima facie case, balance of convenience and irreparable injury.

7. The plaintiffs have filed the present suit for specific performance of agreement to sale, declaration and permanent injunction along with the present interim injunction application that not to transfer or alienate suit property – Plot having construction to any third party. It is the averment of the plaintiff that an agreement to sale executed in 17.08.2020 with the consideration amount of Rs. 75,00,000/-. Out of that Rs.10,00,000/- given as an earnest money to the deceased Samir Rajkumar Sharma with the condition that after the title clearance, Samir Rajkumar Sharma has to execute a sale deed in favour of present plaintiffs. Further, averred that in 2021, Samir Rajkumar Sharma died, the plaintiffs are ready and willing to perform their part of contract, but, defendants are denied to execute the registered sale deed in favour of plaintiff.

As per the defense of the present defendants, the suit property is belonged to joint family and Samirbhai having only 1/4th share over the suit property. The present suit has been filed by the plaintiff, is barred by law of limitation, delay and latches. The suit is also barred by non-joinder and mis-joinder of necessary party. The present suit has been filed by the plaintiffs against the mother and brother of Samirbhai Sharma, without joining legal heirs of the deceased Samirbhai Sharma and other 4 parental Aunts of the Samirbhai Sharma.

8. I carefully perused the agreement to sell submitted at Mark-4/1 relied by the plaintiffs. A plain reading of the above these documentary evidence, it clearly transpires that Samirbhai has executed undivided share of the ancestral property in favour of the present plaintiffs. Since, Samirbhai Sharma passed away in 2021 and his legal heirs' wives and children inherit his estate/share, the present suit had been filed by the plaintiffs against the mother and brother of Samirbhai without impleading his direct legal heirs which is defect the suit of the plaintiffs.
9. It is admitted fact that the suit property is undivided. Hence, all the co-sharers hold undivided share over the suit property. A decree for title or specific performance passed without them being a party to the suit cannot bind their rights. As per the provision of Section-12 of the Specific Reliefs Act, the specific performance of a part of the contract. If the vendor agrees to sell property larger then his actual share, the court usually cannot grant specific performance of whole property. At the best, the plaintiffs can only claim the specific performance for Samirbhai Sharma's undivided 1/4th share provided the plaintiffs pay full proportionate consideration and relinquishes further claims.
10. In view of disputed facts requiring evidence and examination of documents, the plaintiffs have failed to establish a clear prima facie case, balance of convenience and irreparable loss are also not made out in favour of the plaintiffs. Hence, in view of the above, following order is passed.

ORDER

- 1. The present notice of motion application is hereby rejected.**
- 2. No order as to costs.**

Pronounced in the open Court on this **10th** day of August, 2026.

Date :- 10.08.2026
Place:- Ahmedabad.

[Altaf M. Memon]
Chamber Judge, City Civil
Court, Ahmedabad.
(Unique I.D. Code
No.GJ00674)

#MJV