

SPECIAL CIVIL SUIT NO.291 OF 2014**Order below Exh. 5**

The plaintiff has filed this suit for obtaining decree of specific performance of the suit property, declaration relating to the suit property and for obtaining permanent injunction against the defendants. The suit property named Shukan Smile City, is a scheme launched by the defendant No.1 and 2 for residential flats. The suit property is belonging to the property of 26061 sq. mtr. of survey no.220/1, 38050 sq. mtr. of survey no. 224/2 and 1214 sq. mtr. of survey no.228 of Moje : Ranip, Taluka : City, District : Ahmedabad and out of that the suit property is situated in the 28830.66 sq. mtr. of combine survey no. 220P1 of TP Scheme No.66/A and sub plot No.2.

The plaintiff's case is that the Shukan Smile City is a residential scheme launched by the defendant company. In this scheme, on the 4th Floor, Flat No.D/4-401 bearing 102.29 sq. yrd. and undevided 38.95 sq. mtr. open land is the property which is the main subject matter of the suit property. For which a registered sale agreement was executed on 9th January, 2014 for Rs.24,00,000/-. The said agreement for sale was registered before Registrar of Vadaj vide entry No.265. The above said agreement for sale was executed by the defendant in favour of the plaintiff for this suit property and. The plaintiff has paid Rs.3,00,000/- cash on

04.01.2014, Rs.3,00,000/- cash on 05.01.2014, Rs.3,00,000/- cash on 06.01.2014 and Rs.3,00,000/- cash on 07.01.2014 as booking amount. Thus, plaintiff as paid total amount of Rs.12,00,000/- as booking amount prior to date of agreement of sale. This fact is also mentined in the agreement of sale dated 09.01.2014.

Moreover, plaintiff has mentioned in his plaint that, defendant's have started to transfer this suit property to the third party.

As the reasons stated above, plaintiff has filed this suit and prayed for the temporary injunction against the defendant till the final disposal of the suit vide Exh.5.

After due diligence, defendant could not be found. So, affixure of summons was permitted by this Court and in that respect a bailiff has filed report that he has affixed a copy of summons along with the plaint on the out door of defendant's office. After that service of summons, neither defendant nor his advocate remain present before this Court. So, the Court has started to proceed ex-parte against the defendant.

Following are the main issues requires to be framed to conclude this application :

Issues :

1. Whether the plaintiff proves that his case is prima facie?
2. Whether the plaintiff proves that balance of convenience is in

favour of plaintiff?

3. Whether the plaintiff proves that he will suffer irreparable loss, if injunction does not grant against the defendant?
4. What order?

Answers :

1. In affirmative.
2. In affirmative.
3. In affirmative.
4. As per order.

Reasons :

In support of this application, the plaintiff has produced said agreement of sale vide Mark - 3/1. Mark - 3/1 is the registered agreement of sale (without possession). As the fact mentioned in the agreement of sale is that the plaintiff had paid Rs.12,00,000/- cash as a booking amount and after that this agreement for sale was executed on 9th January, 2014 i.e. after receiving the booking amount. Panchnama has also supported plaintiff's case.

As per the contention of Para 6 to 8 of this application, defendant's have started to transfer this suit property to the third party. As above mentioned the agreement for sale dated 09.01.2014 was executed in favour of the plaintiff by the defendants. So, if the property will be transferred to

the third party then plaintiff will have to bare irreparable loss and he will also face multiplicity of proceeding against the third party.

Thus, the documents produced by the plaintiff relating to the suit property are prima facie evidence. Plaintiff has paid booking amount Rs.12,00,000/- towards the suit property to the defendant. Now as per the plaintiff's case, defendant is trying to sale out the suit property to the third person. Moreover, no reply has been filed by the defendants. Thus, plaintiff is likely to suffer irreparable loss and also inconvenience. Thus, plaintiff's case is prima facie case. If no injunction at this juncture will be granted against defendants, plaintiff may have to suffer irreparable loss and also inconvenience. So, this is the case in which it is required to restrain defendant from further transaction of the suit property. So, in the interest of justice, I pass the following order :

ORDER

This application is granted. Defendants are hereby order to maintain status quo towards the suit property.

Pronounced in the open Court today of 18th day of July, 2014.

Place : Ahmedabad

chilka shah
PA

(T.H.DAVE)
UIC No. : GJ00732
7th Addl. Senior Civil Judge,
Ahmedabad Rural, Mirzapur,
Ahmedabad.