

GJSK030025382023



**In the Court of Principal Senior Civil Judge,
Sabarkantha @ Prantij**

Amitkumar Mohanlal Patel

...Plaintiff / Applicant

// Versus //

Rameshbhai Manibhai Patel & others

...Defendants / Opponents

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Appearance :

Ld. Adv. Mr. V. P. Gajjar appeared on behalf of the plaintiff.

Ld. Adv. Mr. K. P. Chaudhari appeared on behalf of the defendants.

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Order Below Exh. 5

In

Special Civil Suit No. 36 / 2023

1. The present application at Exh. 5 has been filed for grant of interim injunction under Order-XXXIX, Rule 1, 2 and Section 151 of Code of Civil Procedure, 1908.
2. The applicant is the plaintiff and the opponents are the defendants and in order to avoid repetition they will be mentioned as plaintiff and defendants respectively and the land

bearing Block/Survey No.87 (Old Block/Survey No.37) admeasuring 6-71-74 Heq.Are.Sqr.Mtr. situated in the vicinity of Mahelav, Ta.: Talod, Dist.: Sabarkantha will be mentioned as “*disputed land*”.

3. Facts of the present application in short are as under:

That the defendants had wanted to sale the disputed land hence the defendants had met the plaintiff and discussed with the plaintiff and total value of the disputed land was decided to Rs.2,12,14,350/-. Thereafter, registered agreement to sale has been made before Sub-Registrar Office, Talod vide entry No.1230 on dtd. 06/09/2019. That the plaintiff had given advance amount of Rs.21,21,400/- to the defendants through cheque Nos.000379, 000380, 000381, 000382 dtd. 05/09/2019 of Kotak Mahindra Bank, Odhav branch, Ahmedabad which were cleared and the defendants had accepted the said amount. That as per the conditions of the agreement to sale, defendants have to bring title clearance certificate. It is mentioned in condition No.1 of the agreement to sale that “the term is fixed for 12 months from today and the title clearance certificate of the disputed land is to be

brought by the seller/writer.” It is further mentioned in condition No.1 of the agreement to sale that “if there is any kind of delay regarding the registered sale deed from the seller, the the contract will have to be extended by three months.” That the defendants have not brought the title clearance certificate within 12 months nor has any writings has been made to extend the period of three months. Further, it is mentioned in condition No.2 of the agreement to sale that “all the responsibility of making right, title clear and marketable of the disputed land will be of seller/writer.” Though the repeated requests has been made by the plaintiff to the defendants, they have not brought the title clearance certificate. Further, it is mentioned in condition No.3 of the agreement to sale that “If you are willing to pay the sale consideration, but, the seller do not issue the sale deed to the purchaser, you may still get the registered sale deed of the land after obtaining the necessary legal proceedings and a decree of specific performance of contract from competent court. That the plaintiff is ready and willing to pay the remaining consideration still the defendants have given notice on 21/05/2021 through lawyer to the plaintiff to cancel the

agreement to sale which was replied by the plaintiff on 02/06/2021. There is possibility that the disputed land may be sold to another party and if this happens, the plaintiff will suffer a lot of loss and if such loss is caused to the plaintiff, it cannot be compensated in terms of money. So, there is a prima facie case of the plaintiff and balance of convenience is also in favour of the plaintiff. Hence, the plaintiff has prayed that neither the defendant shall sale the disputed land in any manner by gift, mortgage, transfer, assignees nor through any written deed. Hence, the plaintiff has filed the present application and prayed to grant the present application in favour of plaintiff and against the defendant.

4. This suit was registered on 07.10.2023 and summons were issued to the defendants. On serving of summons to the defendants, they gave their appearance through their learned advocate vide **Exh.16** (Vakalatnama). That defendants have filed their written statement at **Exh.19** wherein defendants in their written statement denied all the contentions of plaintiff's application and they have denied all the facts averred by the plaintiff in his plaint to be true, correct and admitted. After

denying all facts of the plaintiff, the defendants have further stated, that, this suit is barred by non joinder of necessary party. This suit is barred by the provisions of Specific Relief Act and Transfer of Property Act. This suit is barred by Estoppel. This suit is barred by the provisions of Indian Contract Act. Plaintiff is not come with clean hands. Further, the defendants have stated that MOU has been made between the plaintiff and the defendant wherein it is mentioned in condition 'F' that title clearance certificate has been obtained in advance and the executor has checked that there are no objections or disputes of any kind. That the defendants have further stated that they had published notice in "Sandesh" newspaper for getting title clearance certificate of the other family members on 25/05/2019 and public notice published on 03/06/2019. Thereafter, the plaintiff had made separate agreement to sale of the family members on 06/09/2019. Thereafter, registered agreement to sale vide entry No.1230 has been made on 06/09/2019 wherein sale consideration of the disputed land is mentioned Rs.2,12,14,350/-. The period for making registered sale deed of the disputed land is fixed as 12 months from the date of the agreement and if the plaintiff does not make

registered sale deed of the disputed land within the contract period, the contract amount shall be considered “forefeit” and the contract shall be considered void. Apart from that, it has been decided that if there is any kind of delay regarding the registered sale deed, the period will have to be extended by three months. That the defendants had already bring the title clearance certificate of the disputed land. Still the defendants had not ready to make registered sale deed and they were spending time. Further, cheques given by the plaintiff were returned with funds insufficient endorsement. Hence, the defendants have given legal notice to the plaintiff through lawyer on 21/05/2021 and given intimation that rights of the plaintiff of the agreement to sale have come to an end. Hence, injunction application filed by the plaintiff should be rejected with costs.

4.1 Further, defendants have relied upon the following judgments in support of their written statement which are duly read and considered by this Court :

- (1) U. N. Krishnamurthy (Since Deceased) Thr. Lrs. Vs. A. M. Krishnamurthy Civil Appeal No. 4703 of 2022, Hon'ble Supreme Court

(2) Floating Services Limited Vs. M. V. San Fransceco Di
Paola Civil Misc. Petition No. 14 of 2004, Hon'ble Gujarat
High Court

(3) Sanjaykumar Thakorbhai Naik Vs. Navsari Oil Products
Pvt. Ltd. Co. Appeal From Order No.208 of 2013 Hon'ble
Gujarat High Court

5. On the basis of the pleadings of the parties the following issues have been arisen for the determination of the present application.

:: I S S U E S ::

1. Whether the plaintiff proves that there is a prima facie case?
 2. Whether the plaintiff proves that balance of convenience is in her favour?
 3. Whether the plaintiff proves that if interim relief as prayed for is not granted, it will cause harm which cannot be compensated in terms of money?
 4. What order?
6. For the reasons given herein, my reply to above issues is as under :-
1. In negative.
 2. In negative.
 3. In negative.

4. As per final order.
7. Issue Nos. 1 to 3 are discussed together in order to avoid repetition of facts and for convince of both the parties.
8. I have heard the arguments on both the side.
9. It is well settled principle of law that while issuing a temporary injunction, the tests to be applied are (1) Whether the plaintiff has *prima facie* case? (2) Whether balance of convenience is in favour of the plaintiff? and (3) Whether the plaintiff would suffer any irreparable loss or injury?, if prayer for temporary injunction is not granted. It is also well settled that mere *prima facie* case by itself is not sufficient to grant injunction, the Court further has to satisfy that non-interference by the Court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. If we see the provision contained in **Under Order-XXXIX, Rule-1 of Code of Civil Procedure it is as under:-**

Cases in which temporary injunction may be granted.-

Where in any suit it is proved by affidavit or otherwise-

(a) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree, or

(b) That the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit; or until further orders.

10. Heard Ld. Advocate for the parties, read the present application and record. Ld. Advocate for the plaintiff has argued that he is ready and willing to pay the remaining consideration amount of the disputed land hence defendants are trying to snatch the disputed land wrongfully and if they are not stopped, the plaintiff would suffer irreparable loss and as such plaintiff has prima facie case and factor like balance of convenience is also in favour of the plaintiff. So, his application for interim injunction should be granted.

11. Now, on perusal of present application as well as the plaint, it

appears that the plaintiff has filed this application claiming that he is ready and willing to pay the consideration amount of the agreement to sale. To support of his case, plaintiff has produced the documentary evidence vide Mark 4/1 to Mark 4/6. Looking to the documentary evidence list from Mark 4/1 to 4/6 - Copy of Village Form No.7 of the Block/Survey No.87 is produced vide Mark 4/1, copy of agreement to sale vide entry No.1230 is produced vide Mark 4/2 and Legal notice is produced vide mark 4/3, Reply of notice and counter notice of the plaintiff is produced vide mark 4/4 and copy of the suit application filed against the plaintiff is produced vide mark 4/5 & copy of the order of R.C.S. No.64/2022 is produced vide mark 4/6.

- 12.** To support of the facts of written statement, the defendants have produced documentary evidence vide Mark 21/1 to Mark 21/17. Looking to the documentary evidence list from Mark 21/1 to 21/17 - Power of attorney is produced vide Mark 21/1, Public Notices are produced vide Mark 21/2 to 21/4, Copy of MOU is produced vide Mark 21/5, Copy of cheque return memo of cheque No.000362 is produced vide Mark 21/6, Copy

of cheque return memo of cheque No.000371 is produced vide Mark 21/7, Copy of cheque return memo of cheque No.000435 is produced vide Mark 21/8, Copy of cheque return memo of cheque No.000433 is produced vide Mark 21/9, Copy of cheque return memo of cheque No.000390 is produced vide Mark 21/10, Copy of cheque return memo of cheque No.000403 is produced vide Mark 21/11, Copy of cheque return memo of cheque No.000453 is produced vide Mark 21/12, Copy of cheque return memo of cheque No.000448 is produced vide Mark 21/13, Copy of cheque return memo of cheque No.000430 is produced vide Mark 21/14, Copy of cheque return memo of cheque No.000441 is produced vide Mark 21/15, Copy of cheque return memo of cheque No.000404 is produced vide Mark 21/16, and Copy of cheque return memo of cheque No.000440 is produced vide Mark 21/17 and Village Form No.6 regarding entry No.1686 is produced vide Mark 27/1.

13. Considering the facts of the application, the main contention of the plaintiff is that the defendant herein has not avail the title clearance certificate. The agreement to sale is produced at

Mark 4/2. On the other side, the defendants have stated in their written statement vide Exh.19 that MOU has been made between the plaintiff and the defendant wherein it is mentioned in condition 'F' that title clearance certificate has been obtained in advance and the executor has checked that there are no objections or disputes of any kind. That the defendants have produced MOU vide Mark 21/5 which reads as the title clearance certificate is availed and there is no objection of any parties. This fact is suppressed by the plaintiff in plaint. This MOU was made with consent of the plaintiff is prima facie established. The MOU was made between the parties on dated 06-09-2019 and the sale agreement was made on dated 06-09-2019. The facts regarding MOU between the parties is suppressed by the plaintiff. Further the cheques issued for the payment of the consideration amount that cheques are dishonoured by the bank on the ground of insufficient funds, this fact is also not disclosed by the plaintiff in the plaint. Further on perusing the reply filed by the defendant at Exh - 19 the defendant has served the notice for cancellation of agreement to sale on dated 21/05/2021 and also filed the civil suit for cancellation of sale agreement bearing RCS

No.64/2022, this fact is also suppressed by the plaintiff in the plaint. Plaintiff has purchased the land of the defendant and his relatives and separate agreement to sale are made for the properties all this properties are now sub judice before the court of law. The plaintiff has to pay total amount for all this properties to defendants as per agreement to sale. The plaintiff herein is also not able to show prima facie that he was having financial capacity to pay outstanding amount of disputed properties he has purchased which includes the property of defendants and his relatives. Therefore the readiness and willingness to perform the contract is under clouds. Further the sale agreement is of dated 06.09.2019 and time was essence of contract i.e 12 months and in case of delay 03 months were to be extended after completion of 12 months i.e from dated 06.09.2020 + 3 month i.e 06.12.2020. The defendants have served the notice to plaintiff on dated 21.05.2021 which is produced by the plaintiff at Mark 4/3 stating that as plaintiff has not acted and complied with agreement to sale and MOU within time period, the said agreement to sale and MOU are cancelled and the amount given is forfeited. This notice was replied by the plaintiff, the copy of which is produced at Mark

4/4.

14. In view of the discussions herein above, and considering the facts and the supporting documents produced by the plaintiff on record. The sale agreement and the MOU made between the parties are contrary qua the fact that title clear certificate which was to be obtained by the defendants before executing the sale deed. The agreement to sale itself does not create any right on the property. The title clearance certificate was made available within time period is matter of evidence and whether plaintiff was having financial capacity to pay the outstanding amount is also a matter of evidence. Defendants have produced a judgment of *U.N Krishnamurthy The. Lrs. Versus*

A.M. Krishnamurthy Civil Appeal No. 4703 of 2022, Hon'ble Supreme Court relied upon para - 43, 46, 47,

48 and 51. Defendants have also produced a judgment of *Sanjaykumar Thakorbbhai Naik Vs. Navsari Oil Products Pvt. Ltd. Co. Appeal From Order No.208 of 2013 Hon'ble Gujarat High Court* relied upon para - 20.

The possession of the suit property is with defendants is an admitted fact on record and the sale

agreement and MOU made between the parties is also an admitted fact, but whether both the sides have complied the terms and condition of agreement is a matter of evidence which cannot be decided at this stage.

15. The fact that plaintiff has not come with clean hand is on record and prima facie this court beliefs that plaintiff has suppressed the material facts before this court. Defendants have produced a judgment of *Hon'ble*

Gujarat high court in Floating Service Limited

Versus M.V. San Fransceco Di Paola 2004 (3)

GCD 1921 on this point and relied upon Para - 35 and 36.

Even, if the relief prayed by the plaintiff is granted then it will cause more hardship to the defendants then to plaintiff. Plaintiff has not established that he will have to suffer irreparable loss which cannot be compensated in terms of money. Mere prima facie case would not help plaintiff to get interim injunction when suppression of material fact without disclosure of reason has come to the notice of this court. The authority relied upon by the defendants side are perused

and it is helpful to the defendants. Therefore considering the above discussions, the issue Nos. 1, 2 & 3 are answered in Negative and for issue No.4 following order is passed:-

:: ORDER ::

1. The application for temporary injunction is hereby rejected.
2. No order as to cost.

Signed and Pronounced in open Court on 9th day of
August, 2024.

Data : 09.08.2024
Place : Prantij

(Bhargavsinh Ravsinh Solanki)
(Judge Code No. GJ00919)
Principal Senior Civil Judge,
Sabarkantha at Prantij.

K_J_P