

IN THE CITY CIVIL COURT AT AHMEDABAD**CIVIL SUIT NO.1047 OF 2018****Appearance:**

Mr. B. H. Bhavsar, learned Advocate for the applicants – plaintiffs.
None for the defendants.

ORDER BELOW EXHIBIT-7 (NOTICE OF MOTION):

1. The succinct facts of the case as set out in the injunction application at Exhibit-7 are that, the suit property is ancestral property and plaintiffs and defendants No.1 to 15 are joint owner and in possession of the suit property. However, defendants No.1 and 2 have executed sale deed in favour of the defendant No.20 in respect of 500 square meter land of the suit property without taking consent of the other co-owners. It was further submitted that no partition for the suit property has been made amongst the plaintiffs and defendants No.1 to 15. Therefore, it was submitted by the plaintiffs that the said sale deed is null and void and illegal. Hence, plaintiffs have filed present NM for seeking injunction and subsequently restraining the defendant No.20 and his agents, etc., from transferring and alienating the suit property to any person in any manner, making any type of entries in the revenue record and from interfering into the peaceful possession of the plaintiff with the suit property.

2. On the other hand, notices have duly served to the defendants but except defendant No.3, nobody remained present before the court. However, no reply has been filed by the defendant No.3.
3. I have heard the Learned Advocate for the plaintiffs and perused the case records, it surfaces from the pleadings and record that the plaintiffs are claiming stake over the suit property as the legal heir of their deceased father on the basis of 7/12 extract which is placed at Mark 4/1. It is also apparent from the record that both the parties except defendant No.20 are having their names in the 7/12 extract. It further transpires from the perusal of registered sale deed No.1645, dated 04.10.2017 placed at Mark 4/2 that the defendants No.1 and 2 sold the suit property to the defendant No.20. It further transpires from the perusal of Mark 4/4 i.e., Order passed by City Mamlatdar (Maninagar) Ahmedabad in No.RTS/Takarai Nondh/Rajpur-Hirpur/Case No.19/2017 preferred by the defendant No.3 and plaintiff that the sale entry No.31499, dated 18.10.2017 made on the basis of registered sale deed No.1645, dated 04.10.2017 has been rejected by the City Mamlatdar (Maninagar) Ahmedabad by order dated 12.02.2018. Now before exercising its discretion regarding

grant of interim injunction it is imperative to refer to the case law of the Hon'ble Supreme Court of India in **Wander Ltd. vs. Antox India P. Ltd.** reported in 1990 Supp (1) SCC 727, wherein the Hon'ble Apex Court has laid down the considerations for grant of interim injunction in paragraph 5 which is reproduced hereinafter- *"Usually, the prayer for grant of an interlocutory injunction is at a stage when the having their names in the 7/12 extract existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court*

must weigh one need against another and determine where the "balance of convenience lies". The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted."

4. In **Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai**, reported in (2006) 5 SCC 282, the Hon'ble Apex Court held that- *"29. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii)*

clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."

5. In **Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008)**, the United States Supreme Court held as "*The test for whether a preliminary injunction is appropriate requires determining whether the plaintiff is likely to succeed on the merits, whether the plaintiff is likely to suffer irreparable harm without the injunction, whether the balance of equities and hardships is in the plaintiff's favor, and whether an injunction is in the public interest.*"
6. Now if we apply the dictum of the above cases on the facts of present case on the point of prima facie case the plaintiffs are able to satisfy that they have a stake over the suit property as their names are mentioned in the 7/12 extract of the suit property, as regards to balance of convenience is concerned prima facie the plaintiffs are joint owner of the suit property along with the defendants except defendant No.20 and act of the defendants which may infringe their rights on the suit

property needs to be stifled and while doing the right of the defendants is not going to be hampered or curtailed and consequently balance of convenience lies in favour of plaintiffs. Finally in so far as the irreparable loss is concerned if the suit property is disposed by the defendants the plaintiff undoubtedly will suffer irreparable loss which cannot be quantified in terms of money, and therefore on this score the plaintiffs are entitled for the relief sought for.

7. Hence, keeping in view the prima facie case and balance of convenience which lies in favour of plaintiffs, on account of which, I pass the following order:

ORDER

1. The Notice of Motion at Exhibit:7, stands allowed.
2. The defendant No.20 and his agents, etc., are hereby restrained from interfering with the peaceful possession of the suit property and alienating the suit property to any person in any manner and entering entries in revenue records till the pendency of the suit.
3. The present NM is disposed of accordingly.

Pronounced in the open Court on **20th** Day of **January, 2021**.

Date: 20.01.2021
Place: Ahmedabad

(ANDLEEP TIWARI)
Judge, Court No.26,
City Civil Court, Ahmedabad
UNIQUE ID CODE NO.GJ01587