

(2014) 04 GUJ CK 0124
In the Gujarat High Court
Case No : Appeal From Order No. 507 of 2012

Pramukhkrupa Enterprise

APPELLANT

Vs

Kunverben Chaturdas Patel and Others

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 39, Order 43 Rule 1(r), Order 43 Rule 43
Constitution of India, 1950 — Article 14
Criminal Procedure Code, 1973 (CrPC) — Section 482
Partition Act, 1893 — Section 4, 9
Transfer of Property Act, 1882 — Section 44, 53A

Citation : (2015) 1 GLR 169

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : Ankit Shah and J.S. Shah, Advocates for the Appellant; N.K. Majmudar, Advocates for the Respondent

Judgement

S.H. Vora, J.—The present Appeal from Order under the provisions of Order 43, Rule 1(r) of the Code of Civil Procedure, 1908 (for short, "the Code") is preferred by the defendant No. 2 challenging the order dated 3-11-2012 passed by the learned 2nd Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Patan below application Exh. 5 in Special Civil Suit No. 21 of 2012 restraining the defendant No. 2 to erect any additional construction in addition to construction already been done and further, directed both the parties to the suit to maintain status quo position qua the suit property pending final disposal of the suit. No doubt, the present Appeal from Order is filed under the provisions of Order 43, Rule 1(r) of the Code and challenge in this appeal is a discretionary order passed by the learned trial Judge under the provisions of Order 39, Rules 1 and 2 of the Code. In case of Matrix Telecom Pvt. Ltd. Vs. Matrix Cellular Services Pvt. Ltd., , this Court, in Paras 6 and 6.1, observed as under:

"6. Before proceeding further it is required to be noted that the present appeal is

against the rejection of interim relief and the main suit is still pending. If this Court elaborately deals with the matter on merits it is likely that the same would prejudice the case of either side. Therefore, it is well settled law that this Court is not required to go into the merits of the entire matter at this stage and what is required to be seen is whether the appellant-plaintiff has made out a prima facie case or not for grant of interim injunction.

6.1. It is required to be noted that it is well settled law that the appellate Court may not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The appellate Court will not re-assess the material and seek to reach a conclusion different from the one reached by the Court below if the one reached by the Court was reasonably possible on the material. The appellate Court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion."

2. Similarly, in the case of *Wander Ltd. and Another Vs. Antox India P. Ltd.*, , the Hon"ble Supreme Court in Para 9 of the said decision, after considering the scope of Order 43, Rule 1(r) of the Code in an appeal wherein, the discretionary order passed by the learned trial Court is under challenge, observed as under:

"9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the 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."

3. So, in light of the limited powers of this Court, the appellate Court can interfere with the discretionary order passed by the trial Court only in exceptional circumstances and the appellate Court cannot interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except, where the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.

4. The parties to the present proceedings will be referred to as per their original status in the plaint for convenience.

5. Filtering unnecessary details, the dispute centers around the land bearing Survey No. 41/1 admeasuring 0-25-29 forming part of Revenue Survey No. 41/1/1 paiki admeasuring 0-31-36 as well as the land bearing Survey No. 41/1/2 admeasuring 0-40-47 and Revenue Survey No. 41/2 admeasuring 0-01-01 situated at Siddhpur, District Patan which were agreed to be sold to defendant No. 2 by the plaintiffs and rest of the defendants vide sale agreement dated 4-5-2011 in consideration of Rs. 361 lacs. On 3-5-2011, the plaintiffs and defendant Nos. 1 and 3 to 11 executed Power of Attorney to deal with the abovementioned lands which will now be referred to as the "suit property".

6. Plaintiffs - Ms. Kuvarben Patel and Mr. Harshadrai Patel, having 7.5% shares in the suit property, filed a suit for declaration and permanent injunction inter alia challenging the sale-deed dated 11-1-2012 conveying right, title or interest in favour of the defendant Nos. 2, 2/1 and 2/2 executed on the basis of the got up Power of Attorney dated 11-9-1997 wherein, the signatures of the plaintiffs have been forged, and therefore, the plaintiffs sought for declaration to the effect that both the sale-deed dated 11-1-2012 executed in favour of the defendant Nos. 2, 2/1 and 2/2 and Power of Attorney dated 11-9-1997 alleged to have been executed in favour of the defendant No. 1 are null and void and prayed to quash and set aside the same. The plaintiffs have further prayed for some other ancillary reliefs. In the said suit, the plaintiffs have preferred an application for injunction restraining the defendants, their agents, servants and Power of Attorney holder to deal with the suit property and to maintain status quo position qua the right, title and possession of the suit property and further to restrain the defendants from carrying out the construction/development work and to restrain the defendants from transferring and alienating the suit property and also from creating any third party rights in respect of the suit property pending hearing and final disposal of the suit.

7. The learned trial Judge, after hearing the submissions made at Bar, partly accepted the injunction application and directed both the parties to maintain status quo position qua the suit property till final disposal of the suit and further,

restrained the defendant Nos. 2, 2/1 and 2/2 from making any additional construction in addition to the construction already been done on the suit property and also restrained both the sides from mortgaging, transferring, gifting or selling any part of the suit property, pending hearing of the suit.

8. Learned Advocate Mr. Ankit Shah for the defendant Nos. 2, 2/1 and 2/2 mainly urged that the learned trial Judge was not justified in allowing the injunction application under Order 39, Rules 1 and 2 of the Code as the Court is required to consider three basic principles, namely, prima facie case, balance of convenience and irreparable loss or injury. It is submitted by him that there is no dispute that the plaintiffs are the parties to the sale agreement dated 4-5-2011 and they have also executed Power of Attorney dated 3-5-2011. It is an admitted fact that both the plaintiffs have 1.25% and 6.25% shares respectively in the suit property. It is also an admitted fact that the defendant Nos. 2, 2/1 and 2/2 paid Rs. 90,25,000/- at the time of execution of sale agreement and further agreed to pay balance 75% sale price within six months. It is submitted by him that in pursuance to the sale agreement dated 4-5-2011, defendant No. 2 executed Registered sale-deed on 11-1-2012 and paid balance consideration to various co-sharers i.e. plaintiffs and defendant Nos. 1 and 3 to 11 by way of cheques as per their respective shares in the suit property. According to him, it is because of inter se dispute between some of the co-sharers of the suit property, the plaintiffs have not encashed the cheque with a view to bring pressure on defendant Nos. 2, 2/1 and 2/2 to extract more money. Lastly, learned Advocate Mr. Ankit Shah made a statement at the Bar that the defendant Nos. 2, 2/1 and 2/2 are ready and willing to deposit the amount with interest as per share of the plaintiffs i.e. 7.5% of Rs. 360 lacs which is total price of the suit property as fixed and also agreed by the plaintiffs in the sale agreement dated 4-5-2011. In support of his submissions, learned Advocate Mr. Ankit Shah pressed into service the following decisions in the case of:

"(i) Jasoda Indralal Vadhva v. Hemendrabhai Kakulal Vyas, reported in 2009 (2) GLH 437 : [2009 (4) GLR 3213];

(ii) Somiben @ Chimiben and Another Vs. Ukabhai Naranbhai Patel Karta of Huf and Others, ;

(iii) ECE Industries Limited Vs. S.P. Real Estate Developers P. Ltd. and Another, ;

(iv) Ram Naresh Prasad Vs. State of Jharkhand and Others, ; and

(v) Jalaram Developers Vs. Nilaben Mahendrakumar Vaidya and Others, ."

9. Per contra, learned Advocate Mr. N.K. Majmudar for the plaintiffs vehemently opposed the present Appeal from Order on the ground that the appellate Court may not allow to change status quo position of the suit property during the pendency of litigation except in exceptional circumstances. As the facts of this case do not make out any extraordinary ground for permitting the defendant Nos. 2, 2/1 and 2/2 to put up construction and alienate the same, this Court may

not interfere with the impugned order. Learned Advocate Mr. Majmudar, after drawing my attention towards condition Nos. 8 to 10 of the sale agreement dated 4-5-2011, submitted that it was specifically agreed that the sale-deed would be executed by the respective co-sharers in person, and therefore, there was no reason to execute the sale-deed without securing personal attendance of the plaintiffs, and therefore, the sale-deed in question is void and illegal. It is specifically submitted that the defendants, by forging signatures of plaintiffs, got up Power of Attorney dated 11-9-1997 and executed Registered sale-deed dated 11-1-2012 in favour of the defendant Nos. 2, 2/1 and 2/2 in consideration of Rs. 240 lacs. It is submitted that the plaintiffs have also filed criminal complaint against the defendants and the said complaint was carried before this Court by way of quashing petition filed under Sec. 482 of the Code of Criminal Procedure which came to be rejected. In light of this position, if the defendants are permitted to create third party rights, then it would not be possible to restore the original position of the suit property, if further constructions are erected on the suit property. In order to avoid this situation, the learned Advocate Mr. Majmudar made a statement at the Bar that the Court may direct the learned trial Judge to dispose of the suit within a reasonable time so that rights of the parties can be decided and for that, the plaintiffs are ready to proceed with the suit in time bound manner. Lastly, he has urged that considering the scope of provisions of Order 43 of the Code and reasons assigned by the learned trial Judge, no perversity is found in the impugned order so as to interfere at the hands of appellate Court, and therefore, he submitted to dismiss the present Appeal from Order. In support of his submissions, learned Advocate Mr. Majmudar relied upon the following decisions in case of:

- "(i) Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass,
- (ii) Harish Chander Verma v. Kayastha Pathshala Trust, reported in JT 1988 (1) SC 625
- (iii) N. Srinivasa Vs. Kuttukaran Machine Tools Ltd.,
- (iv) Parboti Adhikary and Others Vs. Pradip Adhikary and Others,
- (v) Joy Auto Works and Others Vs. Sumer Builders (P) Ltd. and Another,
- (vi) Ashim Ranjan Das Vs. Sm. Bimla Ghosh and others,
- (vii) Dorab Cawasji Warden Vs. Coomi Sorab Warden and others,
- (viii) Nagesh Kumar v. Kewal Krishan, reported in AIR 2000 MP 116
- (ix) Shamsher Vs. Rustam and Others,
- (x) Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others,
- (xi) Ibrahim Shah Mohamad Vs. Noor Ahmed Noor Mohamed,
- (xii) Smt. Rama Devi and Others Vs. Sanganer Co-operative Housing Society Limited,

(xiii) Gramophone Company of India Limited Vs. Shanti Films Corporation and others,

(xiv) M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, "

10. Before considering the rival contentions, let me consider the decisions relied upon by learned Advocate Mr. Ankit Shah for the defendant Nos. 2, 2/1 and 2/2.

11. In the case of Jasoda Indralal Vadhva v. Hemendrabhai Kakulal Vyas, reported in 2009 (2) GLH 437 : [2009 (4) GLR 3213], the Division Bench of this Court observed in Para 8 as under:

"8. In a suit for permanent injunction, while the Court is considering an interlocutory application, the Court is not called upon to decide the real disputes between the parties. The Court is called upon to see whether the party approaching the Court has a plausible case and whether there is a possibility of such case succeeding at the trial. If that test is satisfied then it is the duty of the Court to see whether the damages that the plaintiff is likely to suffer for the action of the defendants complained of can be compensated in money, and if so, whether there is a standard for ascertaining such compensation. If such compensation can be ascertained, then the interlocutory order of injunction should normally be refused. However, if the Court is of the view that such compensation cannot be ascertained, then it is the duty of the Court to see the balance of convenience and inconvenience of the parties.""

12. In the case of Somiben @ Chimiben and Another Vs. Ukabhai Naranbhai Patel Karta of Huf and Others, , this Court has observed in Para 38 as under:

"38. The Apex Court has also reiterated its view taken in Mandali Ranganna (supra). In the case of Kishor R. Jadeja v. Maruti Corporation (supra) wherein it is held that if the owners of the property remain restrained from developing the same, it is they, who will suffer severe prejudice, as they will be deprived of the benefit of the user of their land during the said period. The balance of convenience and inconvenience is against the grant of such injunction. The success of the suit for specific performance depends to a large extent on tenuous proof of genuineness of the agreement sought to be enforced after 19 years, despite the findings of the trial Court that the suit was not barred by limitation. The Court further observed that the question of conduct of the respondent also becomes relevant, inasmuch as, having slept over its right for more than 19 years, it will be inequitable on its prayer to restrain the owners of the property from dealing with the same, having particular regard to the fact that a large portion of the land have been conveyed to as many as 280 purchasers, who are in the process of erecting construction thereupon. In the present case, the situation is more or less similar. The suit is filed and right of ownership is sought to be claimed and established after more than 18 years. The suit land is already developed and construction is started. Substantial amount has been spent by the respondent No. 4. The grant of injunction restraining the respondent No. 4 from

carrying out further construction would adversely affect his interest and hence grant of injunction even in the form of status quo order would not help anyone, except to bring pressure on respondent No. 4 to settle the whole issue on appellants' terms. The Court may not and should not be a party to such unethical practice."

13. In case of ECE Industries Limited Vs. S.P. Real Estate Developers P. Ltd. and Another, , the Hon''ble Apex Court in Para 19 observed as under:

"19. Such being the state of affairs, i.e. substantial construction has been made on the suit property in respect of which crores of money have been invested by the defendants/respondents and since the defendants/respondents have already paid/deposited the amount payable in terms of the agreement, although belatedly, to the plaintiff/appellant, we do not think that the plaintiff-appellant will suffer any substantial injury if the construction work is not stopped by an order of injunction. It is well settled that when construction has been made on a land, which is of considerable magnitude, and when the plaintiff shall not face any substantial injury, if no order of injunction is granted because of payment/deposit of the entire amount payable by me defendant to the plaintiff under the agreement, though belatedly, we are of the view that the Court will not, as a matter of course, pass an order of injunction against the other party restraining the other party from raising any construction on the suit property till the disposal of the suit. If ultimately, the suit filed by the plaintiff-appellant is decreed, he can be compensated in damages or the defendants/respondents may be directed to pull down the construction and deliver vacant possession to the plaintiff/appellant when no equity can be claimed for such construction by the defendants/respondents. On the other hand, in our view, if at this stage, an order of injunction is granted against the defendants/respondents from proceeding with further construction in the suit property, it will undoubtedly destroy the constructions already made by the defendants/respondents and the defendants/respondents will suffer irreparable loss and injury for not allowing them to make construction on the suit property. That apart, in view of our discussions made hereinabove, the entire amount payable by the defendants/respondents having been paid/deposited in favour of the plaintiff/appellant, mere is no reason to pass an order of injunction against the defendants/respondents when the plaintiff/appellant would not face substantial injury for permitting the defendants/respondents to proceed with the construction in the suit property."

14. In case of Kishorsinh Ratansinh Jadeja Vs. Maruti Corp. and Others, , the Hon''ble Apex Court in Para 24 observed as under:

"24. As far as the lands which the appellant and the other joint owners have been restrained from alienating by the second order dated 22nd April, 2008, are concerned, we are of the view that in the event the order of 22nd April, 2008, is set aside, the respondent No. 1 can be compensated in terms of money and no irreparable loss and injury will be caused to it on account thereof. On the other hand, if the owners of the property remain restrained from developing the same,

it is they, who will suffer severe prejudice, as they will be deprived of the benefit of the user of their land during the said period. The balance of convenience and inconvenience is against grant of such injunction. The success of the suit for specific performance filed by the respondent No. 1 depends to a large extent on tenuous proof of genuineness of the agreement sought to be enforced after 19 years, despite the finding of the trial Court that the suit was not barred by limitation."

15. In case of Jalaram Developers Vs. Nilaben Mahendrakumar Vaidya and Others, , this Court in Para 27 observed as under:

"27. The plaintiffs have prayed for cancellation of sale-deed on the ground that they are having their undivided share in the suit property by virtue of inheritance and they have not given any consent for sale of suit property. Even if the suit property is considered to be joint family property, the decision to sell the suit property was taken during the lifetime of late Shri M.A. Vaidya and entire sale consideration was received during the period from 1999 to 2002. The respondent Nos. 3 to 5 could not file any suit for partition or even suit for cancellation of sale-deed inasmuch as they are signatories to the documents and they have received sale consideration from the appellant. What they could not do directly, could not be permitted to do indirectly. Their challenge to the documents and transactions in question is, therefore, wholly unsustainable. A right to buy and develop the suit property is created in favour of the appellant by virtue Development agreement and Registered agreement for sale. Final sale-deed could not be executed in 2002 immediately after payment of entire sale consideration because of non-observance of certain legal formalities. This would not, however, enable the plaintiffs to bring any action against the appellant. At the most, they are entitled to claim their share in the sale consideration, inter alia, received by the respondent Nos. 4 and 5. The appellant is believed to have the possession of suit property since 1998. Substantial construction has already been carried out and third parties' rights are created. The appellant has made the huge investment on the suit property. Having come to the Court at the belated stage, the plaintiffs could not put the clock back. If they ultimately succeed in the suit, relief may be moulded accordingly and just and fair damages may be awarded to them for the loss, if any, suffered by them."

16. Per contra, learned Advocate Mr. N.K. Majmudar for the respondent Nos. 1 and 2 relied upon the decision in the case of Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, wherein, the Hon"ble Apex Court in Para 10, observed as under:

"10. Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case, no such case of irreparable loss is

made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate Court and me High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages, or, in an appropriate case, the Court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the Courts below, namely, the lower appellate Court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial Court is restored."

17. In the case of Harish Chander Verma v. Kayastha Pathshala Trust, reported in JT 1988 (1) SC 625, the Hon''ble Apex Court observed that it is not appropriate for the appellate Court to allow the defendant-respondent therein to raise construction subject to the condition that in the event of decree being affirmed, the construction shall be pulled down. No such eventuality has arisen in this case, and therefore, the said case is not helpful to the plaintiffs.

18. In the case of N. Srinivasa Vs. Kuttukaran Machine Tools Ltd., , the Hon''ble Apex Court in Paras 11, 12, 13, 15, 17 and 18 observed as under:

"11. In our view, the appellant, in the facts and circumstances of the case, had successfully made out a prima facie case for grant of injunction in the manner granted by the Addl. City Civil Judge, Bangalore. It is not in dispute that the appellant and the respondent had entered into an agreement for sale of the property in dispute inter alia on the terms and conditions already mentioned herein earlier. The respondent has not denied such agreement for sale. The only ground taken by the respondent is that since time was the essence of the contract and the appellant had failed to perform his part of the contract within the time specified in the said agreement for sale, the question of grant of injunction from transferring, alienating or creating any third party interest in respect of the property in dispute would not arise at all. At the same time, it must be kept in mind that it would be open to the respondent to transfer, alienate or create any third party interest in respect of the property in dispute before passing the award by the sole Arbitrator in which one of the main issues would be whether time was the essence of the contract or not. It is evident from the impugned order of the High Court that by vacating the order of status quo granted by the trial Court, practically, me High Court had limited the scope of the arbitration to the extent that the right of the appellant to receive back the amount with or without compensation would be taken away, if ultimately his allegations are found to be true. Though, the appellant has been denied the benefit of injunction but since the application was under Sec. 9 of the Act for

interim measure, to secure the interest of the appellant in the event of his succeeding to an award before the Arbitrator, it would be in the interest of justice to put the appellant on terms. It is also evident from the impugned order that the High Court has made it clear that the observations in the same shall not be understood to have limited the power of the Arbitrator to consider the disputes on all its aspects including grant of specific performance of the contract, but by vacating the interim relief to the appellant, the High Court had made the entire arbitration proceeding infructuous and by dint of vacation of the interim order of the trial Court, the respondent shall be in a position to transfer, alienate the property in dispute to a third party by which third party right shall be created and the appellant shall suffer enormous injury. Furthermore, if, at this stage, the respondent is permitted to transfer, alienate or create any third party interest in respect of the property in dispute, then the award, if passed in favour of the appellant by the Arbitrator, would become nugatory and it would be difficult for the appellant to ask the respondent to execute the sale-deed when a third party interest has already been created by sale of the property in dispute and by possession delivered to the third party. In a contract for sale of immovable property, normally it is presumed that time is not the essence of the contract. Even if there is an express stipulation to that effect, the said presumption can be rebutted. It is well settled that to find out whether time was essence of the contract, it is better to refer to the terms and conditions of the contract itself. Furthermore, the High Court, in our view, has failed to appreciate that by the impugned order they have also limited the scope of arbitration if ultimately the allegations made by the appellant are found to be true. That is to say, if an order restraining the respondent from creating any third party interest or from transferring the property in dispute is not granted till an award is passed, the appellant shall suffer irreparable loss and injury and the entire award if passed in his favour, would become totally negated. In this connection, it is imperative to refer to a judgment of this Court in the case of Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, , which observed as follows:

"Unless and until a case of irreparable loss or damage is made out by a party to a suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case, no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think that in the facts and circumstances of this case, the lower appellate Court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be conditions on which the same is done."

12. Going by the ratio of the abovementioned decision, it is clear that the 6th Addl. City Civil Judge, Bangalore, was justified in directing the parties to maintain

status quo in the matter of transferring, alienating or creating any third party interest as prima facie it has been proved that the respondent was trying to sell the property in dispute to a third party, thus alienating the rights of the property in dispute, which would have caused irreparable damage to the appellant.

13. From a bare perusal of the findings of the High Court reversing the order of the trial Court and rejecting the application for injunction, it would be evident that the appellant had failed to make out a prima facie case for grant of an order of injunction in his favour. But in view of our discussions made hereinabove, we are of the view that the Additional City Civil Judge, Bangalore was fully justified in directing the parties to maintain status quo as to the nature and character of the property in dispute till the award is passed by the Sole Arbitrator as we have already held that if the order of the status quo is not granted and respondent is permitted to sell the property in dispute to a third party, complications will arise and the third party interest will be created, for which the award, if any, passed in favour of the appellant ultimately, would become nugatory. As noted herein earlier, one of the main issues for the purpose of deciding the application for injunction was whether time was the essence of the contract or not. By the impugned order, the High Court had failed to appreciate that in the contract relating to immoveable property, time cannot be the essence of contract. In any event, even in such a case, the arbitration clause would survive and the dispute would be required to be resolved. That being the position, pending disposal of the arbitration proceeding, interim measure to safeguard the interest was required to be taken. The High Court also, in our view, had failed to appreciate the material on record as the agreement and the correspondences produced by the parties to the effect that since the appellant was required to furnish the nil encumbrance certificate till the date of transaction to show that there was no charge over the property and further since the property was to be kept vacant at the time of the execution of the sale-deed, time cannot be held to be the essence of the contract in the facts and circumstances of the case, and accordingly, the interim measure was necessary to prevent irreparable loss and injury. However, the question whether the time was the essence of the contract or not is to be decided by the Arbitrator in the arbitration proceeding and for that reason only the High Court had also left open such issue to be decided by the learned Arbitrator and in this connection, the High Court observed as follows:

"As such the contentions with regard to survivability of the arbitration clause and the dispute as to whether time is the essence of the contract are issues which are within the realm of the Arbitrator and accordingly, we do not wish to pronounce on the same, and therefore, we do not see reason to refer to the arguments and case-law referred in this regard."

15. It is well settled that even if an agreement ceases to exist, the Arbitration clause remains in force and any dispute pertaining to the agreement ought to be resolved according to the conditions mentioned in the Arbitration clause. Therefore, in our view, the High Court was not justified in setting aside the order

of the trial Court directing the parties to maintain status quo in the matter of transferring, alienating or creating any third party interest in the same till the award is passed by the Sole Arbitrator.

17. In view of our discussions made hereinabove, we are of the view that the disputes raised by the parties can only be determined by the Sole Arbitrator and when admittedly, an Arbitrator has been appointed to decide such dispute, the parties should be directed to maintain status quo in the matter of transferring, alienating or creating any third party interest in the same till the award is passed by the Sole Arbitrator.

18. At the same time, considering the fact that some time would be required for the Arbitrator to pronounce his award wherein the question whether time was the essence of the contract or not would be required to be determined and if the parties are directed to maintain status quo in respect of the property in dispute, till such award is passed, and for that reasons, the respondent would not be entitled to transfer, alienate the property in dispute during the pendency of the Arbitration proceeding and considering the balance of convenience and inconvenience of the parties, we feel it proper to direct the appellant to deposit the balance amount of Rs. 4,99,03,829/- (Four Crores Ninety-nine Lacs Three Thousand Eight Hundred Twenty-nine) within a period of three months from the date of supply of a copy of this order to the 6th Additional City Civil Judge, Bangalore, in fixed deposit for a minimum period of six months initially in a nationalised bank in favour of the respondent and renew the same till the disposal of dispute before the Arbitrator. The original fixed deposit receipt shall be kept with the Arbitrator. In the event of failure of deposit of the aforesaid amount, the order of status quo, as granted by the 6th Additional City Civil Judge, Bangalore and affirmed by us, shall automatically stand vacated and the order of the High Court, vacating the order of status quo, shall immediately come into operation."

19. In the case of Parboti Adhikary and Others Vs. Pradip Adhikary and Others, , the Hon"ble Gauhati High Court has observed that vacation of order granting temporary injunction by the appellate Court was not proper in view of the fact that there was possibility of defendant there altering the nature of the suit property during the pendency and ultimately, the learned Single Judge upheld the order of the trial Court.

20. In the case of Joy Auto Works and Others Vs. Sumer Builders (P) Ltd. and Another, , the Hon"ble Apex Court in Para 27 observed as under:

"27. It would not be appropriate on our part to make any observation on the merits of the case of the parties since the same is yet to be decided. We are only required to ensure the balance of convenience and inconvenience and the equities between the parties at this stage. We are also required to consider if any of the parties will suffer irreparable loss and injury unless an interim order, as prayed for by the appellants, is allowed or denied. This is not one of those cases

where the appellants may be suitably compensated by damages in case their suit succeeds."

21. In the case of Ashim Ranjan Das Vs. Sm. Bimla Ghosh and others, , the Hon"ble Calcutta High Court has observed in Para 5 as under:

"5. Relying upon the decision in Muktakesi Dawn and Others Vs. Haripada Mazumdar and Another, , Mr. Roychowdhury contends that the Court is not entitled to look to the defence disclosed in the petition of objection against the injunction while dealing with the injunction matter. The defendant cannot be permitted to blow hot and cold in the same breath. The case referred to by Mr. Roychowdhury is distinguishable from our case. In our case, the defendant not only filed an objection against injunction but also contested the proceeding in the Court of Appeal below. When the result was found to be unfavourable he turned round to challenge the said order on the technical ground. Let us assume for argument"s sake that the plaintiffs cannot be permitted to look into the petition of objection filed by the defendant. Nevertheless, this is a fit case where ad-interim injunction may be granted on the basis of the materials available before the Court. The lease deeds would show prima facie that there were kitchen, bath, privy etc. in the disputed house and that undivided share of a house was sought to be leased out by the lessors. The defendant cannot be heard to say that there is prima facie no material to show that it was an undivided family dwelling house. The brothers or their children might be separate in mess. But they were undivided qua the dwelling house. So the plaintiffs can very well ask for a protection. There is no controversy that the defendant is a stranger to the family and that he is a lessee in respect of a part of the disputed house. So, even if the case is considered ex-parte the plaintiffs are entitled to get an ad-interim injunction."

22. In the case of Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, , the Hon"ble Apex Court in Para 25, observed as under:

"25. The next question for consideration is whether irreparable injury would be caused to the appellant which could not be compensated in terms of money and whether the balance of convenience is in favour of the appellant. While Sec. 44 does not give a transferee of a dwelling house belonging to an undivided family a right to joint possession and confer a corresponding right on the other members of the family to deny the right to joint possession to a stranger transferee, Sec. 4 of the Partition Act gives a right to a member of the family who has not transferred his share to purchase the transferee"s share on a value to be fixed in accordance with law when the transferee filed a suit for partition. Both these are valuable rights to the members of the undivided family whatever may be the object or purpose for which they were conferred on such members. As we have pointed out in some cases, it is stated that the right to joint possession is denied to a transferee in order to prevent a transferee who is an outsider from forcing his way into a dwelling house in which the other members of his transferee"s family have a right to live. In some other cases giving joint possession was

considered to be illegal and the only right of the stranger purchaser is to sue for partition. All these considerations in our opinion would go only to show that denying an injunction against a transferee in such cases would prima facie cause irreparable injury to the other members of the family."

23. In the case of Nagesh Kumar Vs. Kewal Krishan, , the Hon"ble Himachal Pradesh High Court in Paras 17, 18 and 22, observed as under:

"17. In view of the above, the plaintiff has made out a case for grant of temporary injunction as prayed for by him and as was granted by the learned Senior Sub-Judge.

18. In a cause when a co-sharer has sued for permanent prohibitory injunction restraining the other co-sharer from raising any construction over the land jointly owned by them, it is not just and proper to permit the co-sharer against when the relief of injunction has been claimed, to continue/complete construction of a house/structure on such land.

22. As a result, this Revision Petition is allowed and the impugned judgment is set aside and the order dated September 13, 1999 passed by the learned Senior Sub-Judge confirming the order dated July 3, 1999 restraining the defendant from raising construction over the suit land till the disposal of the suit, is restored."

24. In the case of Shamsher Vs. Rustam and Others, , the Hon"ble Rajasthan High Court in Para 4, observed as under:

"4. Order 39, Rule 1, C.P.C. provides that when the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may grant temporary injunction to restrain such act or make such other order for the purpose of preventing the dispossession of the plaintiff or for the purpose of preventing the causing of injury to the plaintiff in relation to any property in dispute. Thus, injunction is a preventive relief. If a party to the suit invades the right of possession of the other party in any manner which results in causing obstruction to the peaceful legal enjoyment of that right, other party can invoke the provisions of Order 39, Rules 1 and 2, C.P.C. and can claim relief of injunction in the suit itself. Injunction is a preventive relief and is generally granted taking note of the equity. The right to enjoy peacefully the property is an important right attached to any interest which may be carved out as a title of the plaintiff or as a right to continue in possession. Section 53A of the Transfer of Property Act cannot be used as a sword but can be used as a shield. In the instant case, the plaintiff has come with a case that under a sale-deed dated 12th July, 1985 he has obtained the possession and he wants to protect the possession which he has acquired under the sale-deed dated 12th July, 1985. He does not want to use the unregistered sale-deed as a sword but he wants to use it as a shield and, wants to get the benefit of provisions of Sec. 53A of the Transfer of Property Act. Admission of party can be used against the party making an admission, of

course, the party making the admission as a right to rebut the admission so made and can plead and can prove that the admission so made is not true. The burden shall be on the party who wants to show that the admission as made is untrue. In the instant case, there is an admission of the party executing the sale-deed and that execution can be used against the party making it. At the same time on the basis of the pleadings and particularly of the plaint, the cause of action has accrued to the plaintiff to protect the right of possession if any and this cause of action is by way of shield and he wants to use this as shield by getting a preventive relief of temporary injunction. He does not seek any relief other than a preventive relief to protect his right, if any, accrued under Sec. 53A of the Transfer of Property Act. In such, circumstances, the Court cannot be helpless and should not be helpless and should pass necessary order which is just, proper and equitable in the facts and circumstances of each case. I agree with the view taken by the Bombay High Court that the temporary injunction can be granted by the Court even in such cases on the basis of the admission so made. If the Court is satisfied that the admission so made, gives the true picture of the case prima facie. It is for the parties to establish before the Court below that who is in possession whether the recital in the document is correct or not and the burden lies on the party who wants to go back from his own admission to disprove this position that he has not correctly stated the recitals."

25. In the case of Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others, , the Hon"ble Apex Court in Paras 39, 40 and 43, observed as under:

"39. Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law. (Vide Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others, , and Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others, .

40. If the instant case is considered, in the light of the above settled legal propositions and admittedly the whole case of the appellant is based on violation of Art. 14 of the Constitution as according to the appellant it has been a case of violation of Equality clause enshrined in Art. 14, the facts mentioned hereinabove clearly establish that the Corporation and the Government proceeded in haste while considering the application of respondent No. 4 which tantamount to arbitrariness, thus violative of the mandate of Art. 14 of the Constitution.

43. In view of above, we are of the considered opinion that the appeal deserves to be allowed and is hereby allowed. In the facts and circumstances of the case, the interim order passed by this Court on 21-7-2008 shall continue in operation till the writ petition is decided by the High Court. The Hon"ble High Court is requested to dispose of the writ petition expeditiously. Needless to say that any observation made herein either on facts or on law shall not adversely effect the case of either of the parties, for the reason that the only question before this Court has been as to whether the appellant deserves to be granted interim protection till his writ petition is decided by the High Court."

26. In the case of Ibrahim Shah Mohamad Vs. Noor Ahmed Noor Mohamed, , this Court has observed that the co-owner has the unrestricted right to deal with his undivided share in the property and that such dealing would be subject to similar right of the other co-owners in the property cannot be disputed, the Court can, for preventing multiplicity of proceedings, injunct the defendant from dealing with the suit property pending disposal of the suit for partition and accounts. In the case on hand, the plaintiffs cannot claim any right more than the amount agreed with me defendant Nos. 2, 2/1 and 2/2 since the plaintiffs have themselves assessed me price of their share as per sale agreement dated 4-5-2011, and therefore, the said case is not helpful to the plaintiffs.

27. In the case of Smt. Rama Devi and Others Vs. Sanganer Co-operative Housing Society Limited, , the Hon''ble Rajasthan High Court in Para 7, has observed as under:

"7. I have carefully gone through these authorities and I am of the view that the view taken by this Court in Mahesh Chand Heda and Another Vs. Mahesh Prasad, , is correct. Bombay High Court in Venkat Dharmaji Gontalwar Vs. Vishwanath and Another, dissented from the view taken by the Madras High Court in Krishnamoorthy Koundar Vs. Paramasiva Koundar, . The case of the plaintiff is that it has been put in possession of the suit land under an agreement of sale. Ordinarily his rights should he protected. There is no bar under C.P.C. which can he invoked in support of the proposition that the plaintiff suing for specific performance cannot obtain any injunction whatsoever and since there is no bar in the C.P.C. an application for grant of temporary injunction is solely governed either by Order 39, Rules 1 and 2, C.P.C. or by the inherent powers under Sec. 151, C.P.C. Injunction is a preventive relief and if the respondent is permitted to sell the plot of land to third party during the pendency of the suit and the third party may make constructions; it will obviously cause further litigation and complication, and as such, I am not inclined to follow the view taken by the Madras High Court in Krishna Moorthy Koundar's case (supra)."

28. In the case of Gramophone Company of India Limited Vs. Shanti Films Corporation and others, , the Hon''ble Calcutta High Court in Para 16, has observed as under:

"16. In a suit for permanent injunction while the Court is considering an interlocutory application, the Court is not called upon to decide the real disputes between the parties. The Court is called upon to see whether the party who has approached the Court has a plausible case and whether there is a possibility of such case succeeding at the trial. If that test is satisfied men it is the duty of the Court to see whether the damages the plaintiff is likely to suit for the action of the defendants complained of can be compensated in money and if so whether there is a standard for ascertaining such compensation. If such compensation can be ascertained and afforded in money, then the interlocutory order of injunction should normally be refused. But if, on the other hand, the Court is of the view that such compensation cannot be ascertained and afforded in money,

then it is the duty of the Court to see the balance of convenience and inconvenience of the parties. If the balance of convenience is in favour of grant then the Court shall normally issue an interlocutory order of injunction upon undertaking of the plaintiff to compensate the defendant against whom the order of injunction is passed if at the trial it is held that the plaintiff is not entitled to such permanent injunction. On the other hand, if it is found that the balance of convenience is against passing of such order, the Court will normally refuse to pass interlocutory injunction. The aforesaid are broadly the principles on which the Court acts while exercising discretion in deciding an interlocutory application for temporary injunction made in a suit for permanent injunction. I think, it is also the duty of the Court to preserve the status quo as far as practicable, while dealing with such a matter."

29. In the case of M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, , the Hon"ble Apex Court in Para 50 observed as under:

"50. In this context, it would be relevant to mention that in the instant case G.B.C. had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable, and therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39, Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings."

30. Now, coming to the merits of the case, issue involved in an interlocutory application before the trial Court was to see whether the plaintiffs approaching the Court have plausible case and whether there is chance of succeeding at the end of trial. If the answer is in affirmative, then the next duty of the Court is to see whether the damages that the plaintiffs are likely to suffer for the action of the defendants complained of can be compensated in terms of money and if such compensation can be ascertained then the interlocutory order of injunction should normally be refused. In the event of the Court is of the view that such compensation cannot be ascertained then also, it is the duty of the Court to see the balance of convenience and inconvenience of the parties.

31. Without expressing any opinion on the real dispute between the parties, in order to address this issue, it is relevant to note some factual aspects of the case which are not in dispute. It is an admitted fact that the suit property was owned

by four different groups consisting of plaintiffs and defendant Nos. 1 and 3 to 11. It is an admitted fact that group No. 1 consists of defendant Nos. 3 to 5 having 55% shares, group No. 2 consists of defendant Nos. 1, 6 and 7 having 15% shares, group No. 3 consists of defendant Nos. 8 and 9 having 15% shares whereas, group No. 4 consists of the present plaintiffs, Power of Attorney holder of plaintiffs namely, Mr. Mahendrabhai Patel and defendant Nos. 10 and 11 having 15% shares in the suit property. Out of five co-sharers/co-owners of the suit property belonging to group No. 4, defendant Nos. 10 and 11 and Power of Attorney holder of the plaintiffs-Mr. Mahendrabhai Patel have 7.5% shares. In other words, the plaintiff Nos. 1 and 2 have 1.25% and 6.25% shares respectively in the suit property. Thus, it can be observed that the defendant Nos. 2, 2/1 and 2/2 become lawful owners of the suit property to the extent of 92.50% by virtue of sale-deed dated 11-1-2012. Furthermore, there is an admitted fact that all the co-sharers/co-owners belonging to group Nos. 1 to 4, agreed to sale suit property to defendant Nos. 2, 2/1 and 2/2 by executing sale agreement dated 4-5-2011 in consideration of Rs. 361 lacs and they have also executed Power of Attorney dated 3-5-2011 in favour of the defendant No. 1. Further, there is no dispute that at the time of execution of sale agreement, defendant Nos. 2, 2/1 and 2/2 paid Rs. 90,25,000/- to the shares of group Nos. 1 to 4. In other words, it can be said that there was an agreement to sale the suit property to the defendant Nos. 2, 2/1 and 2/2 at Rs. 361 lacs and the said transaction was done without any fraud, and thus, it was done at free consent and freewill of all the co-sharers/co-owners of the suit property including the plaintiffs.

32. Bearing in mind this factual position emerging from the plaint and stipulations made in the sale agreement dated 4-5-2011, the contentions raised by the learned Advocates for the respective parties are required to be considered. The main grievance of learned Advocate Mr. N.K. Majmudar for the plaintiffs is that as per condition No. 8, the sale-deed in favour of the defendant Nos. 2, 2/1 and 2/2 was to be executed by all the co-sharers/co-owners in person, and therefore, execution of sale-deed dated 11-1-2012 by the defendant No. 1 on the basis of Power of Attorney dated 11-9-1997 is illegal since the plaintiffs' signatures therein are forged by the other co-sharers of the suit property. At this stage, it is relevant to note that in the year 2000, defendant No. 1 entered into the Registered Sale Agreement by using a disputed Power of Attorney and agreed to sale some of the plots situated in the suit property to the third party. Now, keeping in mind this fact as to use of authority by the defendant No. 1 in the year 2000 and further, assuming that the defendant No. 1 has no authority to execute the sale-deed for and on behalf of the plaintiffs, as alleged in the plaint, and without going into the correctness and truthfulness of the allegations made in the plaint as to forgery of the signatures of plaintiffs in the said Power of Attorney dated 11-9-1997, the learned trial Judge was required to address the issue whether the plaintiffs have plausible case and even if the plaintiffs succeed at the end of trial, then, it was the duty of the trial Court to see

whether the plaintiffs are likely to suffer for the action of the defendants complained of can be compensated in terms of money, and if so, whether there is a standard for ascertaining such compensation. As recorded and found hereinabove, the plaintiffs have willingly and voluntarily agreed to sale the suit property to the defendant Nos. 2, 2/1 and 2/2 at Rs. 361 lacs. There is no dispute that the plaintiffs have 7.5% shares in the suit property. Meaning thereby, if the sale transaction goes smoothly as per condition of sale agreement dated 4-5-2011, in that eventuality, the plaintiffs would get Rs. 27,07,500/-. Except this, plaintiffs cannot get anything more than agreed amount. In these circumstances, assuming for the sake of argument that the defendants have forged Power of Attorney dated 11-9-1997 and illegally executed the sale-deed in favour of the defendant Nos. 2, 2/1 and 2/2, the said action complained of can be compensated in terms of money because the plaintiffs are entitled to receive Rs. 27,07,500/- of the total sale proceeds of Rs. 361 lacs. Here, it is necessary to note that learned Advocate Mr. Ankit Shah for the defendant Nos. 2, 2/1 and 2/2 fairly conceded before this Court that the defendant Nos. 2, 2/1 and 2/2 are ready and willing to pay 7.5% of Rs. 361 lacs from 4-11-2011 which is the date fixed for execution of sale-deed as per condition No. 2 of the sale agreement with interest that may be ordered by this Court subject to result of the suit.

33. So, considering this statement made at Bar and further considering the fact that the defendant Nos. 2, 2/1 and 2/2 became owner of the suit property to the extent of 92.50% without any dispute, there was no reason or legal ground to restrain or prevent defendant Nos. 2, 2/1 and 2/2 from enjoying the suit property on the strength of sale-deed dated 11-1-2012. So, in Court's considered opinion, when the defendant Nos. 2, 2/1 and 2/2 have acquired right over the disputed suit property by virtue of sale-deed to the extent of 92.50% then they cannot be restrained as it would lead to irreparable loss to them and not to the plaintiffs as the amount equivalent to the share of the plaintiffs stands secured in light of the statement made by learned Advocate Mr. Ankit Shah for the defendant Nos. 2, 2/1 and 2/2.

34. It also appears that the learned trial Judge has restrained defendant Nos. 2, 2/1 and 2/2 from erecting construction in addition to the construction already been done. Meaning thereby, the said land is under development and construction has started, and thus, the substantial amount must have been spent by the defendant Nos. 2, 2/1 and 2/2. Surprisingly, the Power of Attorney holder, who belongs to group No. 4, though filed suit for and on behalf of the plaintiffs, did not challenge the sale-deed on any of the grounds urged in the plaint or any other grounds, though he has 1.25% shares in the suit property. So, under these circumstances, grant of injunction restraining the defendant Nos. 2, 2/1 and 2/2 from carrying out further construction would adversely affect their interest, and therefore, grant of injunction in the form of status quo order, as suggested by learned Advocate Mr. N.K. Majmudar with a rider to dispose of the suit within reasonable time would not help anyone except to bring pressure on the defendant Nos. 2, 2/1 and 2/2 to settle the whole issue at plaintiffs' terms and

conditions. Therefore, the learned trial Judge has committed error in accepting injunction application preferred by the plaintiffs in part since irreparable loss and balance of convenience do not lie in favour of the plaintiffs in light of the decisions cited at Bar by learned Advocate Mr. Ankit Shah appearing for defendant Nos. 2, 2/1 and 2/2.

35. In the peculiar facts and circumstances of the case, the decision rendered in case of Maharwal Khewaji Trust (supra), though cited by learned Advocate Mr. Majmudar, is helpful to the defendant Nos. 2, 2/1 and 2/2 rather than the plaintiffs. As found hereinabove, the plaintiffs are not able to make out a case for irreparable loss or damage, the learned trial Judge committed an error in passing the impugned order for the simple reason that the said defendant Nos. 2, 2/1 and 2/2 acquired 92.50% right, title and interest in the suit property without any dispute. Learned Advocate Mr. Majmudar contended that if the defendant Nos. 2, 2/1 and 2/2 are permitted to create third party right or permitted to carry out further construction on the suit property, it would alter the nature of suit property and restoration of anti-status quo position would become impossible. There is no merits in this contention since interest of the plaintiffs stands secured in light of the statement made by learned Advocate Mr. Ankit Shah at Bar i.e. showing willingness to deposit the amount at 7.5% of the amount of Rs. 361 lacs i.e. Rs. 27,07,500/-. Learned Advocate Mr. Majmudar also cited various case-laws at Bar as reproduced hereinabove. In Court's considered opinion and in light of the peculiar facts and circumstances of the present case, none of the cases are helpful to the plaintiffs in any manner so as to sustain impugned order on any ground either on law or on facts. Therefore, the findings recorded by the learned trial Judge appears to be perverse, illegal and run counter to the scope of Order 39, Rule 1 and 2 of the Code and principles settled in the decisions cited at Bar by learned Advocate Mr. Ankit Shah for the defendant Nos. 2, 2/1 and 2/2. Therefore, this Court is required to interfere with the impugned order with the aid of limited powers conferred under Order 43, Rule 1(r) of the Code and accordingly, the present Appeal from Order is allowed. Impugned order dated 3-11-2012 passed by the learned 2nd Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Patan below application Exh. 5 in Special Civil Suit No. 21 of 2012 is hereby quashed and set aside with the following directions:

"(i) The impugned order passed by the learned trial Judge shall stand vacated upon deposit of Rs. 27,07,500/- by the defendant Nos. 2, 2/1 and 2/2 with the trial Court with 9% interest from 4-11-2011 till the date of deposit.

(ii) Upon deposit of such amount by defendant Nos. 2, 2/1 and 2/2, the learned trial Judge shall invest the same in cumulative F.D.R. in the name of defendant Nos. 2, 2/1 and 2/2 initially for a period of one year and thereafter, it shall be renewed from time to time till final disposal of the suit and the original F.D.R. shall be kept in the custody of the Nazir of the concerned Court.

(iii) Any observations made in the present order and also findings recorded by

the learned trial Judge in the impugned order are of tentative nature and the learned trial Judge shall decide the suit on the basis of the evidence that may be led by the parties without being influenced by the interim orders.

(iv) If any request is made by the parties for expeditious hearing of the suit, the learned trial Judge shall consider the same and expedite hearing of the suit and shall decide and dispose of the suit as expeditiously as possible in light of pendency of other old cases before the Court."

FURTHER ORDER:

Upon pronouncement of the judgment and order, learned Advocate Mr. Nayak for learned Advocate Mr. N.K. Majmudar stated at Bar that the plaintiffs want to challenge the judgment pronounced today before the Hon"ble Apex Court, therefore, the operation of the present judgment and order be stayed for a period of four weeks.

Learned Advocate Mr. Ankit Shah for the defendant Nos. 2, 2/1 and 2/2 objects for the same and states that defendant Nos. 2, 2/1 and 2/2 are put into great hardship though there is no dispute that 92.50% shares of co-sharers are transferred legally.

Considering the request, judgment and order pronounced is hereby stayed for four weeks from today so as to enable the plaintiffs to approach the Hon"ble Apex Court. It is clarified that no further time will be granted on any ground. Objection raised by learned Advocate Mr. Shah is rejected.