
(2013) 11 BOM CK 0073

In the Bombay High Court

Case No : Appeal from Order No. 948 of 2013 with Civil Application No. 1201 of 2013

Sunder Shaekhar

APPELLANT

Vs

Shamshad Abdul Wahid Supariwala and Others

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2014) 1 ABR 181 : (2014) 3 ALLMR 331 : (2014) 2 BomCR 195 : (2014) 1 MhLj 738

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : M.A. Khan, for the Appellant; Shriram Kulkarni for Respondent Nos. 1 to 3, for the Respondent

Judgement

Anoop V. Mohta, J.—The Appellant (Original Defendant No. 1) has challenged order dated 3 October 2012 passed in Civil Suit No. 2305 of 2010 passed by the learned Judge, City Civil Court, Bombay. The operative part of order is as under:

1. The notice of motion no. 2722 of 2010 is allowed
2. The defendant no. 1 is temporarily restrained from portraying himself as an adopted son of late Haji Mastan Mirza in any manner whatsoever until further order.
3. The defendant nos. 2 to 4 are also temporarily restrained from projecting or introducing the defendant no. 1 as an adopted son of late Haji Mastan Mirza in any manner whatsoever until further order.
4. Cost as in cause.

Respondent Nos. 1 to 3 (Original Plaintiffs) are daughters of late Haji Mastan Mirza (the deceased). The original Defendant Nos. 2 to 4 (Respondent Nos. 4, 5 & 6) are Printers/publishers/TV news channel of India. The prayers of suit are:

(a) Hold & Declare that adoption of son is not recognized by Islamic Law.

(b) Hold & Declare that Defendant No. 1 is not an adopted son of Haji Mastan Mirza.

(c) Hold & Declare that Defendant Nos. 2 to 4 (print & visual media) have no right to portray Defendant No. 1 as adopted son of Haji Mastan Mirza.

(d) Restrain by way of Perpetual injunction the Defendant No. 1 his agents, servants, managers, representatives, etc. and all person/s claiming through the Defendant No. 1 from portraying the Defendant No. 1 as an adopted son of Haji Mastan Mirza.

(e) Restrain by way of perpetual injunction Defendant Nos. 2 to 4, their agents, servants, managers, representatives etc. and all person/s claiming through them from portraying Defendant No. 1 as adopted son of Haji Mastan Mirza.

2. As per the Appellant, on 27.9.1989 the deceased Haji Mastan Mirza founded a political party namely All India Dalit Muslim Suraksha Mahasangh. The party got registered with Election Commission of India, on 19.5.1992 changed its name to Bharatiya Minorities Suraksha Mahasangh. The appellant was very close to the deceased. He called and treated the Appellant as his son. The deceased had no son. This fact was known to the friends, relative and associates. As per the Appellant, he was orally adopted by the deceased. On 11.6.1992, the Appellant got married; all the invitees were invited by the deceased. On 24.6.1994, the deceased expired, leaving behind daughters-Respondent Nos. 1 to 4. All his final rites were performed by the Appellant as his son.

3. The Appellant has acquired a tenanted office premises, shop no. 3 Arcadia Building, Sir JJ Road, Mumbai and paid money for the same. However, he had obtained the rent receipt in the name of the deceased. In the year 2006, Respondent No. 1 and her husband had been visiting the party office and trying to usurp the office, as Appellant had been conducting the party activity from the office. In October 2006, the Appellant filed a declaratory suit being Suit No. 2253 of 2006 in the Small Causes Court, Mumbai wherein the Small Causes Court had granted an injunction against Respondent No. 1.

4. On 25.6.2007, Respondent No. 1 alongwith many unknown person visited the party office to claim the party office. She had wrongly declared herself to president of party. On 8.10.2010, Respondent Nos. 1 to 4 filed a suit in the Bombay City Civil Court against the Appellant seeking permanent injunction against the Appellant, from portraying himself to be adopted son of the deceased. Respondent Nos. 1 to 4 taken out Motion in the suit. On 10.3.2011, the Appellant filed its reply to the motion. On 5.8.2011, the Respondents filed the rejoinder. On 3.10.2012, the learned Judge of City Civil Court passed above impugned order.

5. The law with regard to the adoption by Muslim and/or under the Mohammedan Law, as contended by the learned counsel appearing for the Plaintiffs based upon the judgment so referred and relied is that the concept of adoption has not been

statutorily recognized in India amongst Muslim community. It is certainly recognized amongst the Hindu community. The Madras High Court, in *S. Mala Vs. Commissioner of Police, Trichy and Others*, has observed as under:

The question as to whether a Muslim can adopt any person and it is legally permissible or not, was considered by the Division Bench of Allahabad High Court in a decision in the case of *Mohd. Atiq Khan Vs. Union of India (UOI) and Others*, (Justice Markandey Katju, as he then was, and Justice Prakash Krishna). The Division Bench relied on the Full Bench decision of the Allahabad High Court reported the case of *Muhammad Allahdad Khan and Another Vs. Muhammad Ismail Khan and Others*, wherein it was held that among the muslims, the doctrine of acknowledgment of paternity is available and there is no question of adoption in muslim law. The Division Bench also relied on the view expressed in *Mulla's muslim law* vide Chapter XVII and the principles of *Mohammedan Law* by Amir Ali vide Part II Chapter I.

In an unreported judgment of the Karnataka High Court, made in R.S.A. No. 2262 of 2005 dated 26.10.2009, the question regarding adoption among muslims was considered, in which the Karnataka High Court held that adoption by a person who is a muslim, cannot be pleaded as there is no concept of adoption known to muslim law.

6. The Patna High Court, in *Md. Amin Vs. The State of Bihar and Others* has recorded as under:

In the principles of *Mahomedan Law* by M. Hidayatullah (N.M. Tripathi Pvt. Ltd.) 1990 u/s 347, it is specifically mentioned that the Mahomedan law does not recognize adoption as a mode of filiation. Tahir Mahmood in his book, "the muslim Law of India, 3rd Edition page 137 "has mentioned". The various kinds of sons other than sons by birth are wholly unknown to muslim Law. So, a person can be the child of the woman who has given birth to that person and of the man who has or is believed or legally recognized to have begotten that person 12 1/2 and none else.

In view of the above, the claim of the petitioner to be appointed on compassionate ground has rightly been rejected by the impugned order as he would not have claimed such appointment on the plea that he was the adopted son of the deceased constable late Md. Kasim as the Mahomedan Law does not recognize adoption as a mode of sonship and under the muslim Law the adoption does not create a parent and child relationship.

7. The Appellant, however, relied upon a judgment based upon Muslim Personal Law (Shariat) Application Act 1937 in *Moulvi Mohammed and Others Vs. S. Mohaboob Begum*, where it is observed as under:

We find that Clause (b) of Section 16 of the Madras Act III of 1873 contemplates that any custom having the force of law and governing the parties or property concerning shall form the rule of decision in respect of subjects enumerated in

the main part of the section unless such custom has; by legislative enactment, been altered or abolished. We find that adoption is not of, the matters dealt with in the main part of S. 16 of Madras Act III of 1873. The nonmention of other "subjects such as adoption in respect of which a valid custom could given and binding on the parties does not mean that it is not permissible for the parties to rely on such a valid custom, if there be one. Section 6 of the Shariat Act-repealed S. 16 of Madras Act III of 1873, in so far as it is inconsistent with the provisions of the Shariat Act. This repeal is of no significance at all for the purpose of this case firstly because Section 16 of the Madras Act III of 1873 has not specifically referred to adoption, as one of the subjects, for a decision regarding which custom shall form the rule. Secondly, even otherwise, in Section 2 of the Shariat Act, adoption is not one of the enumerated subjects, regarding which custom or usage is ruled out. Even if the matter, has been brought within the purview of Section 2 of the Shariat Act, by virtue of a declarator u/s 3(1) thereof-in the instant case, there is no such declaration-there will not be any inconsistency between the provisions. Hence, in the absence of any exclusion or ruling out of custom, relating to adoption under the Shariat Act, in the instances, it is possible to plead and prove such a custom or usage having, the force of law in the locate and amongst the concerned parties. In this context I feel obliged to adopt the ratio of the Bench in Puthiya Purayil Abdurahiman, Karnavan and Manager of the tavazhi tarwad and Another Vs. Thayath Kancheentavida Avoomma and Others, that the Shariat Act did not in terms, totally abrogate custom and usage in respect of matters other than those enumerated in Sections 2 and 3(1) thereonf.

If this is the basis to be taken for the purpose deciding the question as to whether the respondent could come on record as the legal representative of the deceased Zaina Bi on the ground that she is her adopted daughter, then the question that would arise for consideration are: (I) whether there is a custom or usage having the force of law, which recognizes such adoption in the locate and amongst the parties concerned; (ii) whether the respondent has proved such a custom or usage and further the factum of adsorption in accordance with custom or usage; (iii) whether, as the adopted daughter of the deceased Zaina Bi, the respondent could be countenanced as her legal representative in law for purpose of the present lis. It is needless to point out that custom must be ancient and the burden of proof lies upon the party who sets up the custom. The custom to bold good in law must be reasonable and the majority at least of any given class of persons must look upon it as binding and it must be established by a series of well known, concordant and on the whole continuous instances. It is true that the respondent has placed some evidence before the Court below on the question of custom and the factum of adoption as per the custom. But, as rightly pointed out by Mr. S.M. Amjad Nainar, learned counsel for the petitioners, the evidence is from satisfactory and cannot, by itself, bring any conviction to the mind of this Court.

The Court therefore needs to consider this issue of "adoption in Mohammedan

Law" in trial

8. Both the learned counsel have cited various judgment dealing with the aspect of grant of interim mandatory relief/injunction which resulted into grant of final relief of the suit itself. These judgment are (1) M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, (2) Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., , (3) Seema Arshad Zaheer and Others Vs. Municipal Corpn. of Greater Mumbai and Others, , (4) Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others, , (5) Home Care Retail Marts Private Limited Vs. New Era Fabrics Limited (2009) 17 SCC 429, (6) Deoraj Vs. State of Maharashtra and Others, , (7) Biju Ramesh Vs. Vijayakumar, ,

9. (a) The basic provisions of grant of injunction including ad-interim and/or imperative flow from the provisions of CPC (CPC) Order 39 Rule 1 to 8 or 40 and Section 151. The other provisions of Specific Reliefs Act, 1963, especially Section 34 to 41(b) and 42. The court, if case is made out, even can grant temporary injunction in exercise of its inherent power as contemplated u/s 151 of CPC if case is not covered under Order 39 and/or other provisions of the Specific Reliefs Act, but it cannot be against the law.

(b) The Court can grant the interim temporary injunction unless it is in aid and auxiliary to the main/final relief that may be granted, but in a given case, an ad-interim temporary relief may be required to be granted ex-parte till the other side appears and contest the same. The Court, after hearing the parties, even change and/or vary and/or modify the ad-interim and/or temporary relief, so granted. Principally, if no relief can be granted in terms of main prayers, there is no question of granting even a temporary relief on same terms. However, the Court needs to exercise the discretion juridically.

(c) Ad-interim and/or temporary relief, unless exceptional case is made out, cannot be granted having effect of granting final relief at ad-interim and/or interim stage. However, there is no total bar if exceptional circumstances are made out and though the case does not fall within the ambit of Order 39 and/or other provisions of Specific Reliefs Act, to pass such protective and/or interim injunction relief, but certainly cannot be against the expressed and/or implied statutory provisions of law and against the public policy.

(d) The principles of natural justice, equity, and fair play are also important factors apart from inherent power, the Court may invoke while passing any such ad-interim and/or interim relief pending the main/final relief.

(e) An ad-interim relief and/or mandatory ad-interim relief therefore can also be passed/granted by the Court to maintain status-quo ante so that appropriate final relief can be granted by modifying and/or molding the same, basically to protect the interest of the parties and the properties pending the trial of the suit.

(f) The Court cannot restrain by prohibition and/or injunction any party not to initiate and/or institute and prosecute any proceedings in Court of law in normal

circumstances.

(g) The judicial exercise of discretion of the Court required to be exercised within the framework of law and the record and the same should be on the foundation of (i) "a prima facie case", (ii) "the balance of convenience", (iii) "an irreparable injury" and iv) "equity". The purpose is always to protect the Plaintiffs/aggrieved parties' legal and alleged/existed rights against the alleged violation and/or injury by other party and which could not be compensated in damages.

(h) The vague, uncertain and/or false and/or misrepresentation and related averments need to be taken note of in the context of corresponding and similar right and entitlement of the other party and/or the Defendants. The interest/right of other party therefore also required to be checked into and protected and at least need to be taken into consideration till the same are resolved in favour of either of the parties at the appropriate proceedings.

(i) The prohibition and/or injunction and/or such interim protection/relief based upon the doctrine of equitable fair and unfair conduct of the parties invoking the jurisdiction of the Court, are also relevant factors. The conduct of the parties must be fair and honest, not even at the time of invoking the Court's jurisdiction for granting of such relief but also at the time of applying for modification and/or verification and/or vacating the ad-interim and/or temporary injunction

(j) The Court is also not bound to grant interim protection/relief in every case and/or to enforce the negative covenant based upon the facts and circumstances of the case including the contractual terms between the parties. The Court also requires to consider before passing the reasoned order apart from material placed on record, the aspect of the compensation and/or damages. Plaintiff's uncertain allegations, apart from fraud and/or misrepresentation, itself disentitled him to continue with the order of ad-interim injunction and/or restraintment order or though temporarily as it would cause irreparable, uncompensatable damages and/or compensation. The law permits the Court to insist and/or require the Plaintiffs to furnish an undertaking and or the security so that the Defendant/other side adequately compensated, if order and/or trial goes against the party one who sought interlocutory injunction and order of drastic nature. Such interim order and/or such order should be reasonable and fair having foundation of record and the law.

(k) The subject and object of the particular provision and/or statute and the rights and/or entitlement so invoked and its related aspects, custom, usage and practice at national and/or international level. For example, if case/reliefs sought by the Plaintiffs/Petitioners by invoking the provisions of Intellectual Properties Laws and the arbitration laws the scheme purpose and object of the Act/reliefs/customs/practice apart from authorities and case laws, are always play material role for the Court before passing and/or exercising discretion in granting and/or refusing to grant the injunction and/or protective relief, specially when both the parties appear and make their case/submissions based upon the supporting

material placed on record.

(l) Any injunction and/or order specially in India, in view of Section 27 of Indian Contract Act, is also important element in litigations based upon the commercial contract or otherwise.

(m) The aspect of interest of public at large and not only the interest of individual, who may be compensated in terms of money, if case is made out, is also one of the relevant factor.

(n) At the ad-interim stage the Court, based upon the averments and material so placed and if case is made for an ad-interim urgent relief, based upon the averments and the documents, but after satisfying himself by exercising the discretion judicially, an arguable and/or prima facie case is made out, may pass appropriate order in the interest of justice, though temporarily, till other side appears and points out his case. The Court required to consider the rival contentions of the parties at the earliest.

(o) A prima facie case itself is not the sole element. The balance of convenience and/or inconvenience and/or equity, in a given case, are also relevant factors. Even if these elements are there and/or made out, the conduct of the parties is also relevant factor. The Court still needs to consider the aspect of delay and laches in invoking such equitable jurisdiction of the Court. The third person's rights or interest if any created, for whatsoever may be the reason, the party who invoked Court jurisdiction to grant interim and/or protective relief to avoid injury personal injury and the injury to the property, just cannot be overlooked. The injunction and/or interim order, if any, granted and/or ordered, the opposite party/person must be in a position to comply with the same. The timely action including the communication of such order is important to give effect to the order.

(p) The Court may not pass impractical and/or unexecutable and/or infructuous and/or academic orders. Interim order should be fruitful, effective and enforceable in law.

(q) The person or party against whom the injunction and/or interim relief sought must be joined as a party to the proceedings. The Court should not pass any order against the third persons and parties who are not parties to the proceedings, unless exceptional case is made out and to avoid immediate loss and/or injury to the person and/or the property. The fair and full opportunity, required to be given against whom the Plaintiff seeks interim and/or ad-interim relief specially when the dispute is between two private parties and/or person. In case the public interest litigation and/or where the public at large are involved, the Court may pass appropriate order/relief in the interest of public at large.

(r) The Court in case of urgency may not be in a position to judge the merits of the case of the respective parties for want of detail averments and/or material. But once satisfied, by giving short notice or sufficient notice, an ad-interim relief may be granted. If case is made out by the Plaintiffs that there is a serious issue

required to be decided and if the Defendants were not restrained, the compensation/damages would be inadequate and/or there would be irreparable injury and hardship which cannot be compensated in terms of money. The concept of arguable issue and/or tribal issue including of aspect of Court's jurisdiction and as contemplated u/s 9A of CPC, is also relevant factor, but the Court is not prevented from passing ad-interim relief pending the decision of the Court jurisdiction issue. The issue of jurisdiction if decided already, in view of judgment of the higher Courts and/or the provisions of law/statutory provisions are clear, which prohibits and/or debar the Court from entertaining any civil suit proceedings in view of specific provisions and mechanism provided under the Specific Law/statute, the Court in such situation may refuse and/or entertain such interim injunction application. Even if granted such relief, the Court is under obligation to decide and/or dispose of the issue of Court jurisdiction at earliest to avoid further complication, apart from further loss of time and money of everybody. The Court must decide the preliminary issue of jurisdiction by passing order on the application filed by the parties at earliest or even otherwise.

(s) Assessing relative strength of the parties is important so also above principle of law while passing equitable relief. The court definitely may modify or vary the order, if case is made out. No final expression and/or opinion on merits of the matter is necessary, but it cannot be overlooked while even passing any ad-interim order. All facets of law include and cover the reasonable and judicial exercise of discretionary power by the Court. The Court cannot ignore the strength of either of the parties submissions though no fixed Rule or formula can be announced for grant of any interim relief and/or injunction. The facts and circumstances of each case should be the foundation before passing any interim order apart from principles of law of injunction and/or prohibition as noted above.

(t) In a given case, the Court may pass appropriate interlocutory injunction to mitigate the risk of injustice for a certain period and or till the decision of the dispute so raised. However, the Court proceedings cannot be permitted to be used and utilised for and by the unscrupulous and/or defaulters and/or persons who play fraud and/or who invoked the Court jurisdiction by intentionally suppressing material facts and documents. In a given case though all ingredients are available, but on the ground of fraud and/or misrepresentation the Court may refuse to entertain and/or grant any equitable urgent relief.

(u) The aspect of injunction and/or prohibitory order by crossing national and/or international jurisdiction or borders has different facets, but above principles are relevant even for granting and/or passing injunction and/or prohibition order against the party beyond the Court's jurisdiction and/or beyond the control.

(v) The Court must not act arbitrarily, capriciously order perversely. The court must exercise discretion judicially within the framework of law and the record.

(w) Such interim relief/protection, even required to be granted for and/or against the persons who are invoking the Court's jurisdiction being a defaulter of any

kind and/or unauthorized occupier of any premises and/or trespasser or occupants of an unauthorised structure of private and/or the government or statutory body land and/or the footpath. The specific provisions of law which debars the Court from entertaining such suits, are also important factors, before granting an injunction so sought for. The Court/Tribunal, therefore, in such matter requires to exercise jurisdiction in accordance with law and pass order by giving an opportunity to all the concerned, even considering the aspect of delay, latches and interest of public at large, and not only the interest of such individuals.

(x) The mini trial may not be necessary at the stage of grant of temporary injunction, but the above principles just cannot be overlooked while passing the order-interim and/or protective order based upon various uncertain and certain situations to meet the ends of justice. The Court need to strike balance between the extreme positions as averred considering all the pros and cons of the case in a given set of facts by speaking reasoned order.

10. Admittedly, there are litigations pending between the parties though not directly on the adoption but related to the tenancy and the property rights of the deceased. There is no serious issue that the Appellant had long association with the deceased since childhood. They had good and cordial relationship, apart from the material to justify treated like son since 1983/1989/1992. The Appellant's own case is that the deceased referred and treated him like his son and had "orally adopted me as his son and had been since treating me as his own son". The name was also changed announced as "Suleman Mirza". The Respondents-Plaintiffs and the concerned community are fully aware of this. Admittedly, the Appellant not converted to the Islamic religion till this date. In the political arena, the Appellant has been closely known and associated with the political party. The adoption and/or no adoption is not relevant, so far as the leaving in the society as treated son, the community and being the leader and/or the active member of the political property and/or even with the close associations. There are ample material on record including the averments of the parties about such good relationship of the Appellant with the deceased and the family members. The earlier relationship and specially during the life time of the deceased, the recognition and/or the treatment so given to the Appellant by all, just cannot be overlooked as relevant factor for considering the case of the Respondents-original plaintiffs and/or the defence of the Appellant.

11. There is even no denial to the fact of last "Chaliswan rites" as per the Islamic Law, preferred by the Appellant when the deceased died on 25 June 1994 being the only treated son. No objection was raised at any time by the Plaintiffs and/or other relatives, of this nature, during the life time of the deceased and even on the death and thereafter till the date of the alleged cause of action in the year 2007-2008 and 2010. There is no serious denial to the facts of religious rites at the death anniversary of the deceased every year "Fateha" and all related rituals and published material by him. There is also ample material to show that the

Appellant tried to help and assist the other family members/daughters of the deceased in various criminal and the civil litigations. No objection even at that time was raised by any one. The Plaintiffs and other relatives recorded and accepted even in writing that the Appellant is the close and confident person and even recorded in MOU dated 27 May 2005 in other proceedings. The Appellant, in fact, averred that he is not interested in the property of the deceased "my godfather". The main dispute arose when the Plaintiffs and the others related tried to enter into the party office which is the subject matter of the other pending litigation. The Appellant averred to place on record the supporting material to show that the deceased had declared and announced as his son. All these matters are matter of trial and detailed inquiry.

12. The question still remains if "Adoption" which is not permissible under the Islamic Law as per the Plaintiffs-Respondents, which is denied by the Appellant by referring to the Judgment so recorded above, the Court required to consider this basic aspect at this prima facie stage, in view of the facts and circumstances of the case, apart from the Islamic law, as well as, the law of injunction as read and referred by the parties.

13. There is no direct material and/or evidence placed on record by the Appellant to show that he was adopted by the deceased by following any particular Islamic custom and/or usage. As per the Islamic law, except the alleged custom of particular community, the "adoption of son" is not recognized. The burden, therefore, is lies upon the Appellant to prove the same. The Appellant's own case, as per the averments itself, that the deceased declared and/or announced orally and treated him as "adopted son" and/or treated him like his son. The treating any person like son and/or daughter even though having close relationship and association, that itself is not sufficient to treat the son and/or daughter unless recognized and/or validly proved under the Islamic Law to be the "adopted son" by "the deceased and/or any Islamic person". But, at the same stroke, in the present facts and circumstances, and in view of above undisputed position on record that the Appellant had been treated like his son from his childhood, just cannot be overlooked specially when there was no objection of any kind raised by the Respondents-Plaintiffs during the life time of the deceased and/or even thereafter till the alleged cause of action arose.

14. The meaning of "adoption"/"adopt" is defined in the various English Dictionaries, is as under:-

a) Concise Oxford English Dictionary (Indian Edition) (Eleventh Edition, Revised)

"Adopt"-(1) legally take (another's child) and bring it up as one's own...

b) Wharton's Law Lexicon, with exhaustive reference to Indian Case Law (Fifteenth Edition) Universal Law Publishing Co. Pvt. Ltd.

Adoption"-an act by which a person adopts as his own the child of another. Until recently there was no law of adoption in this country though it exists in other

countries, as France and Germany, where the civil law (as to which, see Sand. Just.) prevails to any great extent. In 1889 and 1890, Lord Meath introduced Bills in the House of Lords to legalize adoption.

c) K.J. Aiyar's Judicial Dictionary, (Eleventh Edition), The Law Book Company (P) Ltd.

Adoption"-It is the legalised recognition of a person as one's son. According to the Hindu notions, a son is necessary to a person not only to continue the lineage but to offer oblation to the means or the ancestors to the fourth degree. The soul of a person dying issueless will not be saved. So this institution has been founded on the Hindu law. The person adopted has all the privileges of a natural born son except that there is a lessening in the share of property different according to the various schools of Hindu law, if a natural son is born subsequent to the adoption. Certain ceremonies are necessary for adoption. There are five kinds of adopted sons of which Dattaka and Kritrima are the two forms ordinarily found in India.

15. The prayers are made by the Plaintiffs against the Appellant and thereby prayed for injunction, as recorded above. The Islamic Law if nowhere permitted and/or recognized that any person can be declared "adopted son" unless duly proved by the custom as alleged. The claim and/or related entitlement in the Society and/or community merely because, some paper publications are made and/or done and/or such publicity was given in the multi-media including papers, that itself is not sufficient to deny the Appellant's claim of being treated like son by the deceased. The Appellant himself had claiming and averred that he was "orally adopted" by the deceased. There is no bar and/or restriction whatsoever, under any law which prevent anyone, the adult and/or the minor and/or the major to have such a relationship of father and/or mother and/or son and/or daughter and/or brother. There is no claim of property of the deceased by the Appellant on the basis of "adopted son", the prohibition so raised and/or averred in the background of the matter, is not acceptable to grant the relief so sought in such fashion in such subsequent suit. The balance needs to be struck, specifically at the instance of the Respondents-original plaintiffs, who never objected for such statement and/or publicity given by the deceased when he was alive by treating the Appellant as his son. The delay and the latches on the part of the Plaintiffs in this background are also another factor, which just cannot be overlooked at the time of passing of such type of final reliefs at this stage of the suit. The balance of convenience, equality and irreparable injury, if any, are again the matter which required to be noted by the Court while passing the order. Any order, even if passed by the Court, must be executable and enforceable.

16. In the Mohammedan Law the "adopted son" if is not recognized unless proved in view of customs if any and in the present case when Defendant No. 1 himself averred that he is orally adopted son and he has no interest in the property and/or demand in the properties of the deceased the declaration so sought required to be considered in a due trial. But at this stage itself no such

order can be passed as done in the matter. The long relationship and the close association as recorded in the society and the community, by and between the Appellant with the deceased just cannot be overlooked. The word "adoption" as averred itself not sufficient to deny the claim of the Appellant.

17. Defendant Nos. 2 to 4 are the print and visual media persons. Such injunction only against them could not serve the purpose even otherwise. Merely because averments are made that itself, in my view, is not sufficient to pass order against Defendants Nos. 2 to 4 as the averments and also the material on record show that the deceased Haji Mastan Mirza treated Defendant No. 1- Appellant as his son since so many years and all the parties including Plaintiffs have full knowledge of the same since long and so also the concerned community and the political party in question. Therefore, the injunction so granted, in my view, is required to be set aside. However, it in no way means to state that Defendant No. 1 treat himself as adopted son under the law. That this modification means he may be treated like his son which no one can prevent as there was no objection at relevant time when the deceased was alive and even thereafter and so also in the community as well as political party. This also means that Defendant No. 1 in no way at this stage entitle to claim any right and/or interest in the properties of the deceased as alleged legal adopted son unless adoption is proved. In view of above reasons there is no question of granting injunction against Defendant No. 1 and/or his agents or his servants and/or managers and representatives from portraying Defendant No. 1 as treated like son and/or closed association with the deceased, at this stage of the proceedings and after so many years. The delay, elements of laches, conduct, equity, balance of convenience, irreparable injury and prima facie case goes against the Plaintiffs but support the case of the Appellant.

18. The words "adopted son" is result of apprehension of the Plaintiffs, in view of the proceedings so initiated and as recorded. The use of this word itself is not sufficient to deny the existence of long relationship between Defendant No. 1 and the deceased. Therefore, I am inclined to interfere with the order. The impugned order dated is quashed and set aside. The Notice of Motion is dismissed. However, it is made clear that Defendant No. 1, pending the suit, is not entitle to claim any right or interest in the properties of the deceased as a adopted son but entitle to claim the rights and interest in other capacity. It is also made clear that these observations are only for deciding the present Appeal from Order. The learned Trial Judge to decide the matter uninfluenced by the observations so made in accordance with law. The averment raised in other proceedings need to be treated in accordance with law uninfluenced by above directions. No costs. The learned Counsel appearing for the Defendants seeks stay of the order so passed today in Court. Considering the reasons so given, I am declined to grant stay. The request is rejected accordingly.