

(2016) 05 CAL CK 0039

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction C.O. No. 2374 of 2015 With C.O. No. 2295 of 2015

Supriya Chowdhury Sarcar @ Supriya Sarcar

APPELLANT

Vs

Mst. Hafiza Begum & anr.

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Specific Relief Act, 1963 — Section 38

Citation : (2016) 3 CalLT 192

Hon'ble Judges : Mr. Ashoke Kumar Dasadhikari, J.

Bench : Single Bench

Advocate : Mr. Saptangsu Basu, Mr. Srijib Chakraborty and Mr. S. Pathak, Advocates, for the Appellant; Mr. Pratik Prokash Banerjee, Mr. Uday Ch. Jha, Ms. Maheswari Sharma and Ms. Tulika Banerjee, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Ashoke Kumar Dasadhikari, J.—In both the revisional applications being C.O. 2374 of 2015 and C.O. 2295 of 2015 the plaintiff/petitioner challenged the impugned common order dated 22nd May, 2015 passed by the learned Additional District Judge, 8th Court at Alipore allowing Misc. Appeal No.325 of 2012 preferred by the defendants/opposite parties and dismissing the Misc. Appeal No.272 of 2012 preferred by the plaintiff/petitioner.

2. Both the revisional applications are taken up together since the learned Appellate Court disposed of both the appeals by a common judgement and order relating to the same property, between the same parties.

3. Petitioner/plaintiff filed Title Suit No.10117 of 2011 before the learned Civil Judge, Senior Division, 2nd Court at Alipore against the defendants/opposite parties praying for a decree for declaration that the petitioner/plaintiff is the owner of the suit property by virtue of registered deed of gift executed on 15th October, 2007 and also for a decree for declaration that the deeds of conveyance

being deed no.4400 of 2008 dated 3rd January, 2008 and deed no.4397 of 2008 dated 2nd January, 2008 registered on 11th April, 2008 is outcome of fraud and further for a decree for permanent injunction restraining the defendants/opposite parties from in any manner alienating, transferring and/or causing encumbrance and/or from in any manner disturbing the possession, occupation and enjoyment of suit property by the plaintiff or her tenant.

4. The said application for temporary injunction was moved before the learned Trial Judge on 29th July, 2011 when the learned Trial Court was pleased to pass an ad interim order of injunction restraining the defendants/opposite parties from transferring, alienating or encumbering the suit property in any manner whatsoever and also restraining the opposite parties/defendants from disturbing possession of the plaintiff over and in respect of the suit property till 24th August, 2011. The opposite parties/defendants being aggrieved by the order dated 29th July, 2011 preferred one Misc. Appeal being Misc. Appeal No.363 of 2011 which was ultimately dismissed by an order dated 20th December, 2011 by the learned Additional District Judge, 7th Court at Alipore upon a contested hearing. Relevant portion of the learned Appellate Court's order dated 20th December, 2011 disposing of Misc. Appeal no.363 of 2011 is quoted hereunder :-

" Now there is no dispute that the suit property belonged to the plaintiff and she was/is in possession of the said property till June, 2011 through her tenant S. Jaikishan and the said tenant paid rent to the plaintiff till June, 2011 as is apparent from documents placed before the trial court, both for the flat and garage space. Coming to the sale deeds as mentioned herein before at serial no.9, I find as many as five deeds were executed within a short span of 10 days, all in the month of January, 2008 by the plaintiff/respondent in favour of the defendant/respondent, which includes the suit property yet till 2011 June the tenant S. Jaikishan was paying rent to the plaintiff/respondent. This fact when brought to the notice of Id. trial court, the Id. trial court found a bona fide prima facie case to investigate as it was alleged that the sale deeds in respect of the suit property were all executed by the plaintiff in favour of the defendant under the misconception that the said deeds were deed of exchange and not deed of sale. Moreover, it is again clear from the documents mentioned in serial nos.3 and 4 placed before the trial court that the suit property was not being possessed by the defendant/appellant so balance of convenience was in favour of issuing ad interim injunction for a short period to allow the defendant/appellant to appear before the court and explain the circumstances. Finally no irreparable loss could be sustained by the defendant/appellant since till June 2011 the possession of the suit property was with the tenant S. Jaikishan and the suit was filed on 27th July, 2011 and ad interim order of injunction passed was on 29th July, 2011. On the contrary, if no ad interim injunction was passed by the Id. trial court and the property was further transferred by the appellant/defendant as is apprehended by the plaintiff/respondent and materials on record show that there were plausible reasons for such apprehension. The petition for M.P. Case under section 144(2) Cr.P.C. lodged against plaintiff by defendant as well as the letter written

to the Secretary shows that the plaintiff prima facie established the cause for such apprehension of further transfer of the suit property and thus in my opinion Id. trial court was justified in granting the ad interim order of injunction to protect the suit property. As all the 3 conditions were in favour of granting of such ad interim order of injunction, I find no reason to interfere with the order impugned.

In view of my above discussions I do not find it necessary at this stage to discuss other decisions cited by the parties, it is left open for the parties to agitate the points before the trial court at the time of contested hearing of the temporary injunction petition.

Hence, it is

Order

That the misc. appeal be and the same is dismissed on contest. The ad interim order of injunction is extended till the disposal of the temporary injunction petition by the trial court.

Let a copy of this judgement along with L.C.R. be sent down forthwith to the Id. court below. No order as to costs."

5. Thus, it is evident from the aforementioned order that the petitioner/plaintiff is in possession of her flat and garage space through her tenant. Against the order passed in Misc. Appeal no revision was filed before this Court by the defendants or any one of them.

6. In the meantime, the defendants/opposite parties filed an eviction suit against the tenant of the plaintiff/petitioner and moved an application under Order 39 Rules 1 and 2. The said application for injunction was taken up for hearing by the learned Trial Court and the learned Trial Court passed an order restraining the defendants/opposite parties from parting with possession of the suit property to any person till 18th November, 2011. Subsequently the interim order passed by the learned Trial Court in that Ejectment Suit no.14828 of 2011 was extended.

7. It is alleged that during pendency of the application for temporary injunction and during subsistence of the ad interim order granted by the learned Appellate Court in Misc. Appeal no.363 of 2011 and also the order passed by the learned Trial Court in Eviction Suit No.14828 of 2011 the petitioner/plaintiff was dispossessed from the suit property in violation of the order of injunction. Since there is already an order of injunction in favour of the petitioner/plaintiff the petitioner was compelled to file an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure once again praying for mandatory order or injunction directing eviction of the opposite parties/defendants from the suit property with the help of police or in the alternative an order directing the defendants/opposite parties, their men and agents and servants to vacate the suit property within seven days from the date of order and to give back peaceful possession of the suit property to the petitioner. The petitioner also filed a

supplementary affidavit in connection with the application for mandatory injunction.

8. The opposite parties/defendants contested both the applications filed by the plaintiff/petitioner under Order 39 Rules 1 and 2 by filing written objection. Opposite parties/defendants also filed supplementary affidavit to the written objection. The petitioner/plaintiff also filed affidavit in reply before the learned Trial Court. Thereafter the original application for interim injunction and the application for mandatory injunction both came up for hearing before the learned Trial Court. The learned Judge after hearing the learned Counsel for both sides was pleased to pass an order on 2nd June, 2012 thereby partly allowed the application for temporary injunction filed by the petitioner, thereby restraining the defendant/opposite parties from transferring, alienating and assigning the suit property till disposal of the suit and rejecting the application for mandatory injunction filed by the petitioner/plaintiff subsequently by the same order. The petitioner/plaintiff being aggrieved by the order impugned dated 2nd June, 2012 preferred Misc. Appeal no.272 of 2012. The opposite parties/defendants also preferred Misc. Appeal no.325 of 2012 being aggrieved by the order of injunction granted against them. Both the aforementioned Misc. Appeals one preferred by the petitioner/plaintiff and the other preferred by the opposite parties/defendants were heard together and the learned Appellate Judge was pleased to dispose of both the appeals by a common judgement and order dated 22nd May, 2015 thereby dismissing the Misc. Appeal no.272 of 2012 preferred by the plaintiff/petitioner for mandatory injunction and allowing Misc. Appeal no.325 of 2012 preferred by defendants/opposite parties thereby vacating the interim injunction granted by the trial court on 2nd June, 2012.

9. Now against the impugned order passed by the learned Appellate Court in disposal of both the aforesaid appeals is subject matter of these two revisional applications.

10. Mr. Saptangsu Basu, learned Senior Counsel appearing for the plaintiff/petitioner submitted that Title Suit no.10117 of 2011 was filed by the plaintiff/petitioner before the learned Civil Judge, Senior Division, 2nd Court at Alipore against the opposite parties for a declaration that the petitioner/plaintiff is owner of the suit property by virtue of registered deed of gift dated 15th October, 2007 and for a decree of declaration that deeds of conveyance being deed no.4400 and 4397 of 2008 dated 3rd January, 2008 and 2nd January, 2008 respectively registered on 11th January, 2008 is outcome of fraud and also for decree for permanent injunction restraining the defendants from alienating, encumbering and/or transferring the suit property in any manner whatsoever and from causing any disturbance to the possession of the petitioner over and in respect of the property in question which was enjoyed by the plaintiff through her tenant.

11. Mr. Basu submitted that at the time of moving the ad interim injunction application under Order 39 Rules 1 and 2 the petitioner/plaintiff pointed out that the so-called two deeds are products of fraud and in fact, no compensation

money was paid to the plaintiff/petitioner. He submitted that if one accepts the date of execution of both the deeds, one is 2nd January, 2008 and other one is 3rd January, 2008 then it would be very difficult to accept the contents of the deeds at page 6 wherein the reference of gift deed was given to the effect that the gift deed executed by one Mr. Ajit Sarkar on 24th July, 2007 was duly registered in the office of the Additional District Sub-Registrar-III at Alipore recorded in Book no.1 Volume no.5 pages 5542 to 5570 Being no.05086 for the year 2007 since the document was registered on 5th February, 2008. The execution dates were much before the date of registration on 5th February, 2008, therefore registration date could not be mentioned on 2.1.2008 or 3.1.2008.

12. Mr. Basu submitted that the learned Trial Court at the time of hearing the application for ad interim order of injunction specifically found that the copies of the deeds reveal that conveyances in respect of the suit property and the property at 10, Guru Saday Road, Calcutta-17 was executed on different dates. It appears from the annexures that the suit property is under occupation of one tenant namely, Suparna Jaikishan. There is specific allegation of fraud practised upon the plaintiff by the defendants/opposite parties in collusion with each other. The learned Trial Court recorded that there is no description in what manner the consideration price for the conveyance in respect of the suit property as well as in respect of the property at 10, Guru Saday Road, passed. It appears from the conveyance deeds that consideration price in each of the deeds is at Rs. 15 lacs and according to the learned Trial Court, obviously such consideration money shall not be paid in cash. According to the learned Trial Court, transfer of consideration money ought to have been mentioned to show that the transaction is a bona fide one but in this case there is no description in what manner consideration price was paid. There is specific allegation of commission of fraud. According to the learned Trial Court, plaintiff/petitioner made out a prima facie case and the learned Court was of the view if the possession of the plaintiff through her tenant, Suparna Jaikishan, is taken away she would suffer irreparable loss and injury. Learned Court below also found that the balance of convenience and inconvenience is in favour of the plaintiff. Learned Trial Court, therefore, passed an order of restraint against the defendants/opposite parties from transferring, alienating or encumbering the suit property in any manner and also restrained the defendants from disturbing the possession of the plaintiff in the suit property till 24th August, 2011 which was later on extended.

13. Mr. Basu then submitted that against this order of the learned Trial Court dated 29th July, 2011 the defendants/opposite parties preferred one Misc. Appeal which was numbered as Misc. Appeal No.363 of 2011.

14. Mr. Basu submitted the learned Appellate Court also tested the order impugned in the touchstone on three well-settled principles which are to be satisfied at the time of granting interim order i.e. prima facie case, irreparable injury and balance of convenience. It was also recorded that prima facie

existence of a right and its infringement is first condition for grant of temporary injunction and such infringement was caused in this case.

15. Mr. Basu pointed out that the learned Appellate Court in its judgement and order dated 20th December, 2011 specifically recorded that petitioner/plaintiff is in possession through her tenant, Suparna Jaikishan and was paid rent. It was also recorded that the learned Trial Court found a bona fide prima facie case to investigate as it was alleged that the sale deeds in respect of the suit property were all executed by the plaintiff in favour of the defendants under the misconception that the said deeds were deed of exchange and not the deed of sale. It was also found that the suit property was not being possessed by the defendants/opposite parties so balance of convenience was in favour of issuing ad interim order of injunction. It was also found that no irreparable loss could be sustained by the opposite parties/defendants since till June, 2011 the possession of the suit property was with the tenant, Suparna Jaikishan and the suit was filed on 27th July, 2011 and ad interim order of injunction was passed on 29th July, 2011, for those reasons the learned Appellate Court dismissed the Misc. Appeal filed by the defendants/opposite parties.

16. Mr. Basu submitted that the ad interim order of injunction granted by the learned Trial Court was extended till the disposal of the temporary injunction petition by the Appellate Court.

17. Mr. Basu submitted that even in spite of three injunction orders, one of the Trial Court's order, the Appellate Court's order and also the order passed in the eviction suit the opposite parties/defendants dispossessed the petitioner/plaintiff from the suit property by taking possession from Suparna Jaikishan.

18. Mr. Basu submitted that this is clearly abuse of process and he further submitted that the property was taken by the opposite parties/defendants in clear violation of the order of injunction passed by the learned Trial Court which was affirmed by the learned Appellate Court in the aforementioned Misc. Appeal.

19. Mr. Basu submitted that all three aforementioned orders will show that the plaintiff/petitioner is in possession of the suit property through her tenant. In such circumstances, there was no other alternative for the petitioner/plaintiff except filing of application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure praying for mandatory injunction directing eviction of the defendants from the suit property with the help of police or in the alternative order directing the defendants, their men and agents, servants to vacate the suit property within seven days from the date of the order and to give back peaceful possession to the plaintiff/petitioner.

20. Mr. Basu submitted that defendants/opposite parties have obtained possession in clear abuse of process and also in violation of all the orders passed by the learned Civil Courts and that too before final disposal first injunction application filed by the plaintiff/petitioner under Order 39 Rules 1 and 2 which was to be disposed of by the learned Trial Judge in terms of Order dated 20th

December, 2011.

21. Mr. Basu submitted the Trial Court took up both the applications, the first one which was filed for ad interim order of injunction and the subsequent one for passing mandatory order of injunction and both the applications were heard by the learned Trial Court. Both the said applications were finally disposed of on 2nd June, 2012.

22. Mr. Basu submitted at the time of disposal of both the aforementioned applications the learned Trial Judge failed to appreciate that plaintiff was all along in possession of the suit premises. But it was erroneously recorded that the plaintiff is not in possession of the suit premises.

23. Mr. Basu submitted that the learned Trial Court failed to consider that at least on two previous occasions, once before the learned Trial Court and thereafter before the learned Appellate Court, the plaintiff successfully proved prima facie case, balance of convenience and prejudice to be caused to her and on that basis ad interim order of injunction was granted. Even at the time of disposal of the aforementioned two applications the learned Trial Court was of the view that plaintiff made out a prima facie case. However, learned Trial Court also failed to note the findings of both the Courts on two earlier occasions that plaintiff/petitioner is in possession of the suit premises through her tenant Suparna Jaikishan.

24. Mr. Basu submitted that the learned Appellate Court also failed to appreciate that the consideration money was not paid and both the deeds of conveyance dated 2nd January, 2008 and 3rd January, 2008 are products of fraud which was specifically pleaded in the plaint.

25. Mr. Basu submitted that at the time of execution there is no scope to record the registration of the deed of gift which was registered on 5.2.2008. He submitted that date of execution of both the deeds are of 2nd January, 2008 and 3rd January, 2008. Under no circumstances, the opposite parties/defendants could have knowledge about such registration on 5th February, 2008.

26. Mr. Basu submitted that the plaintiff definitely has made out a triable issue and proved a strong prima facie case in her favour, which was not appreciated by the learned Trial Court.

27. Mr. Basu submitted that since the petitioner was admittedly in possession through her tenant which was recorded and accepted on two previous occasions by both the learned Trial Court as well as the Appellate Court, such dispossession caused in violation of three Civil Court's order would definitely cause inconvenience and prejudice to the petitioner/plaintiff and the learned Trial Court conveniently did not weigh those things in favour of the plaintiff/petitioner and have come to a wrong conclusion that the defendants are admittedly in possession of the suit premises.

28. Mr. Basu submitted that the defendants have come into possession removing

the tenants in clear violation of the aforementioned three orders and definitely caused prejudice to the plaintiff.

29. Mr. Basu then submitted that balance of convenience and inconvenience is in favour of the plaintiff/petitioner and in the facts and circumstances of the case the learned Court below ought to have passed an interim order of injunction and also a mandatory injunction as prayed for in disposal of his subsequent application filed under Order 39 rules 1 and 2 read with Section 151 of the Code of Civil Procedure. Unfortunately, the learned Court below allowed the first application under Order 39 Rules 1 and 2 on contest restraining the defendants by an order of temporary injunction till disposal of the suit from transferring, alienating, assigning the suit premises and also erroneously dismissed the application for mandatory injunction.

30. Mr. Basu then submitted that the first part of the order restraining the defendants from dispossession or transferring, alienating or assigning the suit premises by which the defendants/opposite parties were aggrieved, was taken up by the defendants/opposite parties before the learned Appellate Court by filing a Misc. Appeal being Misc. Appeal no.325 of 2012 which was again erroneously allowed by the appellate court without consideration of the aforementioned facts and also the materials which are available on record.

31. Mr. Basu submitted since the learned Trial Court committed serious mistake rejecting the application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure for granting mandatory injunction even in spite of all three courts' orders restraining the opposite parties/defendants from dispossessing the plaintiff/petitioner from her possession through her tenant.

32. Mr. Basu submitted that the order impugned passed by the learned Trial Court refusing prayer for mandatory injunction and also holding that the possession of defendants/opposite parties over the suit premises, was questioned in a Misc. Appeal preferred by the petitioner/plaintiff being Appeal No.272 of 2012 which was again erroneously dismissed by the learned Appellate Court below by the same order dated 22nd May, 2015.

33. Mr. Basu submitted that the learned Appellate Court rejected the findings of the learned Trial Court to the effect that the execution of two deeds are doubtful on the alleged plea that the deed of gift was registered on 5th February, 2008 and the transfer deed being 4397 of 2008 and 4400 of 2008 were executed on 2nd January, 2008 and 3rd January, 2008 respectively had been registered finally on 11th April, 2008. How the learned Appellate Court came to a conclusion that the plaintiff failed to make out a prima facie case in her favour.

34. Mr. Basu submitted that the lower appellate court completely misdirected itself and did not record or take note of the material fact that on the date of execution of both the impugned deeds i.e. on 2nd January, 2008 and on 3rd January, 2008 there was no finally registered deed of the gift, but most conveniently recorded that the aforementioned two deeds contained that the

deed of gift was registered on 5th February, 2008.

35. Mr. Basu submitted that the registration of the aforementioned deed of gift was completed on 5th February, 2008. Therefore, under no circumstances the defendants/opposite parties could write the date of registration giving volume number, page number and other details since the deed of gift was finally registered on 5th February, 2008.

36. Mr. Basu submitted that the learned Appellate Court also failed to appreciate that suit property was not possessed by the defendants/opposite parties.

37. Mr. Basu pointed out that this is the case of the plaintiff that the aforementioned two deeds in respect of suit property were all executed by the plaintiff in favour of the defendants under the misconception of the said deeds were deed of exchange not the deed of sale.

38. Mr. Basu further submitted there is no dispute that Suparna Jaikishan was inducted by the petitioner/plaintiff and Suparna Jaikishan paid rent till June, 2011 and the suit was filed in July, 2011 and ad interim order of injunction was also granted in July, 2011 and both the courts have recorded in previous order that the plaintiff is in possession over the suit property through Suparna Jaikishan.

39. Mr. Basu submitted the findings of the learned Appellate Court are all contrary to materials available on record and the learned Court was mistaken to note the fact that possession was taken from Suparna Jaikishan without any permission from any court of law specially when there are three orders passed by the learned Courts below that the plaintiff/petitioner is in possession through her tenant, Suparna Jaikishan.

40. Mr. Basu submitted that on the one hand, the learned Appellate Court recorded that the suit would be tried, whether two deeds of transfer are valid or not would be adjudicated and finally decided and at the same time, recorded that there is no reason to prevent the defendants from transferring the suit premises.

41. Mr. Basu submitted that creating third-party interest and transfer would definitely cause prejudice to the petitioner who has made out a prima facie case in her favour which was found and recorded on previous two occasions by the learned Trial Judge as well as learned Appellate Judge which was completely not considered.

42. Mr. Basu submitted the learned Appellate Court erroneously recorded that there was no order of status quo in respect of the suit property against the tenant and also erroneously held that such surrender of tenancy was wrong or not is to be decided at the time of trial.

43. Mr. Basu submitted that the learned Court below has made a serious mistake while rejecting the appeal filed by the plaintiff/petitioner praying for mandatory injunction. He submitted that the impugned order should be set aside, the

defendants/opposite parties should be restrained from transferring, alienating or encumbering the suit property in any manner as directed by the learned Trial Court below and there should be mandatory order of injunction in favour of the plaintiff to get back possession with police help and/or to direct the defendants to hand over possession of property in question to the plaintiff/petitioner.

44. Mr. Pratik Prakash Banerjee, learned Counsel assisted by Mr. Uday Ch. Jha, learned Counsel appearing for the opposite parties/defendants submitted that the ad interim order of injunction granted by the learned Trial Court on 29th July, 2011 was an ex parte order. There was no scope to make any submission for and on behalf of his client the defendants/opposite parties.

45. Mr. Banerjee submitted that it is true that Misc. Appeal no.363 of 2011 was filed by his clients the defendants. However, that was again ad interim order and the ad interim order of injunction was extended till the disposal of temporary injunction petition by the learned Trial Court. He submitted that the application under Order 39 Rules 1 and 2 filed for ad interim order of injunction was finally heard before the learned Trial Judge and all materials were placed before the learned Trial Judge.

46. Mr. Banerjee submitted that learned Trial Court as well as Appellate Court on previous occasions failed to appreciate the fact that both deeds were presented for registration on 11th April, 2008 and deed of gift of Ajit Sircar was executed on 24th July, 2007 which was registered on 5th February, 2008.

47. Mr. Banerjee submitted that since both the deeds registered on 11th April, 2008 recording due registration of the deed gift in the office of the Additional District Sub-Registrar-III at Alipore recorded Book no.1, Volume no.5, pages 5542 to 5570 Being no.05086 for the year 2008 cannot be found illegal.

48. Mr. Banerjee submitted that there is nothing wrong in the contents of the deeds. He also submitted that even assuming for the sake of argument non-payment of the consideration money did not pass to the plaintiff/petitioner, on that ground the deeds cannot be declared void.

49. Mr. Banerjee submitted that the amount of consideration could be claimed by filing a suit and that would redress the grievance of the plaintiff/petitioner, if there be any.

50. Mr. Banerjee submitted there is nothing wrong to get back possession from the occupation of the tenant, Suparna Jaikishan. He submitted that eviction suit was evidently filed by his client but there is no illegality whatsoever taking possession of the flat in question.

51. Mr. Banerjee submitted that during pendency of the suit, the tenant voluntarily surrendered tenancy. He further submitted by a letter dated 7th July, 2011 the plaintiff/petitioner attorned tenancy in favour of the opposite parties/defendants. Thereafter on 22nd July, 2011 the suit was filed by her.

52. Mr. Banerjee submitted that the learned Appellate Court has carefully considered the entire matter and has come to a definite conclusion that the plaintiff could not make out a prima facie case in her favour.

53. Mr. Banerjee submitted that two deeds, which were registered in April, 2011 is much after the registration of the gift deed executed by Ajit Sarkar.

54. Mr. Banerjee then submitted that on 27th December, 2011 possession was taken from the tenant by the opposite parties/defendants. However, according to him, there is no illegality whatsoever in taking possession.

55. Mr. Banerjee then submitted that the claims and contentions of the plaintiff are all contrary to facts. In fact the deeds were duly registered after execution by the plaintiff herself and the defendants being the lawful owners of the flat in question have every right to transfer the property. He submitted that the injunction passed by the learned Trial Court is not sustainable, which was considered by the learned Appellate Court and upon consideration of the entire materials available on record, the learned Appellate Court allowed the appeal filed by the defendants/opposite parties which was numbered as Misc. Appeal no.325 of 2012. He submitted the present position is that the defendants/opposite parties are in possession of the premises and that too on surrender of tenancy by the sole occupant/tenant who was in occupation. Therefore, the balance of convenience and inconvenience lies in favour of the opposite parties/defendants. Defendants' possession, however, would in no way cause any prejudice to the plaintiff/petitioner.

56. Mr. Banerjee added that this Hon'ble Court cannot substitute its views in place of findings arrived at by the learned Appellate Court.

57. Mr. Banerjee submitted the learned Appellate Court have found prima facie title in favour of the defendants/opposite parties. Therefore, there is no illegality whatsoever. He submitted mere conduct of the defendants/opposite parties and alleged plea of supposed abuse of process cannot be a ground of passing mandatory injunction.

58. Mr. Banerjee submitted that this Court has got no jurisdiction to decide the factual matter. He submitted that there is nothing wrong in taking possession from the tenant during subsistence of both the orders dated 29th July, 2011 and 20th December, 2011.

59. Mr. Banerjee submitted that this Court cannot substitute the view taken by the appellate court de hors title and prima facie title. He also reiterated that the previous two orders cannot stand in the way of disposing of the application on merit since the previous order passed by the learned Appellate Court on 20th December, 2011 continued the interim order till the final disposal of injunction application.

60. Mr. Banerjee submitted both the revisional applications are not maintainable and the revisional applications should be dismissed.

61. Now the question arises whether the order impugned passed by the learned Appellate Court on 22nd May, 2015 is sustainable in law and whether the plaintiff/petitioner is entitled to get a mandatory injunction in her favour to restore back possession and further an interim order over and in respect of the property restraining the defendants/opposite parties from transferring, alienating and encumbering in any manner whatsoever.

62. Let me first take up the case made out by the plaintiff in her plaint.

63. Plaintiff contended that the suit property belonged to one Mrs. Manjuri Sarcar wife of Mr. Ajit Kumar Sarcar on leasehold basis. The said Manjuri Sarcar transferred the suit property in favour of her husband Ajit Sarcar including all its rights and interests by a gift deed dated 24th July, 2007 registered in the office of D.S.R.-III, Alipore being document no.5086 for the year 2007. The said Ajit Sarcar subsequently transferred the suit property also by a deed of gift dated 15th October, 2007 registered in the office of the A.D.S.R. at Sealdah being document no.760 of 2007 and no.758 of 2007 in favour of the plaintiff/petitioner and delivered physical possession thereof to her. Said Ajit Sarcar regarded the plaintiff as his own granddaughter as his sons misbehaved with him and caused extreme cruelty upon him and as a consequence whereof said Ajit Kumar Sarcar did not allow his son to get benefit out of the suit property and ultimately transferred the suit property. Thus, the plaintiff came to acquire the suit property. At that relevant point of time plaintiff used to reside at Flat no.8B, Ajanta Apartment, 10, Gurusaday Road, police station Karaya, Kolkata- 700019, which also belonged to said Ajit Kumar Sarcar. Subsequent to the aforesaid transfer of the properties by Ajit Kumar Sarcar, said Manjuri Sarcar died on 2nd November, 2007 and thereafter several litigations broke out between Ajit Kumar Sarcar and his son touching the suit property. It was contended by plaintiff that plaintiff was not well educated and she held from village. Said Ajit Kumar Sarcar being an octogenarian aged about 85 years was subject to cruelty and torture by his son. The defendant no.2 who deals with real estates, came to know of the bickering between said Ajit Kumar Sarcar and his son and in order to take advantage of such situation to his own benefit, offered to help and assist the plaintiff to guise of mitigating the problem between Ajit Kumar Sarcar and his son. Ajit Kumar Sarcar having believed and reposed faith on the defendant no.2 and started to act to the dictates of the defendant no.2 who assured that he will take care of the litigations to which the plaintiff breathed with ease for the reason that she is from village, very much ignorant about legal proceeding and Ajit Kumar Sarcar is very old person. It was contended that the plaintiff having put in a very hard corner, the defendant no.2 offered his flat on the 5th floor at premises no.32A, Lower Range, police station Karaya, Kolkata-700017 for being purchased by the plaintiff for value and entered into an agreement for sale. The defendant/opposite party no.2 also took earnest money or advance consideration of Rs. 1,25,000/- from the plaintiff. Then the defendant no.2 subsequently came up with ill-conceived unique idea of offering to the plaintiff to opt for exchange of the said flat of 5th floor of 32A, Lower Range, police station Karaya,

Kolkata-700017 for which agreement for sale has been done as aforesaid against plaintiff's flat no.8B, at Ajanta Apartment, 10, Gurusaday Road and the plaintiff consented to such offer being duped to effecting exchange of the said flat. The plaintiff little did know then that on a comparison of the localities in which the flats are situate, the appreciation value of her flat is just more than double the worth of the flat given to her by the defendant no.2. However, the plaintiff having regard to avoid litigation agreed to such proposal, the defendant no.2 took the plaintiff along with her grandfather, said Ajit Kumar Sarcar to the office of Additional Registrar of Assurance-I, Calcutta on 11th May, 2008 for causing execution and registration of necessary instruments according to the dictates of the defendant no.2 and defendant no.2 informed that he will do everything needful for such exchange and she is not required to pay or bear any cost for such exchange.

64. In the manner as aforesaid plaintiff/petitioner came to possess the aforesaid flat no.5C, on the 5th floor at Premises No.32A, Lower Range, police station Karaya, Kolkata-700017 and likewise the defendant no.2 got possession of the aforesaid flat no.8B, Ajanta Apartment at 10, Gurusaday Road, Kolkata-700019. It is suddenly came to light that the defendant no.2 subsequently sold the said flat at 10, Gurusaday Road for more than a crore of rupees. However, the plaintiff considering the locality of flat at 32A, Lower Range being extreme congestion and disturbance decided to dispose of the same to one Mr. Afroz Ahmed for a consideration of Rs. 40,00,000/-. Later on the plaintiff came to know that the two deeds of conveyance dated 11th May, 2008 by which the defendant no.2 effected transfer of the said flat 5F on the 5th floor, 32A, Lower Range, police station Karaya, Kolkata-700107. There were some typographical mistakes as in some place the flat was stated to be situated on the 3rd floor and elsewhere it was stated to be situated on the 5th floor and such being the situation the plaintiff informed the defendant no.2 about her dilemma. Be it noted, that when the plaintiff was in possession of the said flat both the deeds dated 11th May, 2008 were prepared at the instance of defendant no.2.

65. In the aforesaid scenario the defendant no.2 having come to know the intention of the plaintiff intends to sell and transfer the said flat on the 5th floor at 32A, Lower Range surreptitiously filed application under Section 144(2) of the Code of Criminal Procedure before the First Class Executive Magistrate at Alipore registered as MP Case no.926 of 2011 on 16th June, 2011 against the plaintiff behind her back stating her to be a licensee in respect of the said flat no.5F on the 5th floor at 32A, Lower Range, police station Karaya, Kolkata-700017 and obtained one false and frivolous order of restraint. Plaintiff was never informed about the order passed in the aforementioned 144(2) case. However, the plaintiff having no knowledge about the impugned order sold and conveyed the said flat no.5F, situated in the 5th floor of the premises no.32A, Lower Range, police station Karaya, Kolkata-700107 to said Afroz Ahmed. While plaintiff was removing her few remaining household articles from the said flat and the said Afroz Ahmed was bringing in his household articles into the said flat in the

evening on 18th May, 2011 they were obstructed by the defendant no.2, assisted by the police personnel from local police station on the plea of certain order of restraint obtained from the First Court of Learned Executive Magistrate at Alipore against the plaintiff. Then and then only the plaintiff learnt for the first time in the evening of 18th May, 2011 about the order passed by the learned Executive Magistrate. The said Afroz Ahmed had to file a suit being Title Suit no.1459 of 2011 before the 2nd Court of learned Civil Judge, Senior Division at Alipore against the defendant no.2 seeking for declaration that he is the owner of the said flat no.5F, situated on the 5th floor of the premises no.32A, Lower Range, police station Karaya, Kolkata-700017 and he also moved one application for injunction under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure making the plaintiff as proforma defendant. Upon hearing the parties, the learned Court has been pleased to pass order in the form of maintaining status quo in respect of the said flat and as a result, the plaintiff is unable to remove her belongings from the said flat and said Afroz Ahmed is unable to bring in his belongings into the said flat, while said Afroz Ahmed has since been handed physical possession of the said flat and is in occupation and enjoyment of the said flat though unable to bring in her belongings into the said flat for the reason aforesaid. Thus, in the manner aforesaid, the defendant no.1 while sold and transferred the flat no.8B, Ajanta Apartment, 10, Gurusaday Road, Kolkata- 700019 for a huge consideration and restrained the plaintiff from removing her belongings from the said flat no.5F, on the 5th floor of the premises No.32A, Lower Range, Kolkata-700017 with ill-conceived motive. It was contended by the plaintiff/petitioner that Suparna Jaikishan is a tenant in respect of the suit premises at monthly rental of Rs. 15,000/- under the plaintiff for a pretty long time and all on a sudden in the month of April, 2011 Suparna Jaikishan went out of town for couple of months and prior to her leaving she had paid rent upto June, 2011. Suddenly on 28th May, 2011 the plaintiff came to know from the security personnel of the Hemchaya Apartment building in respect of the suit property who was on duty that unknown strangers were visiting the building and making enquiry of the suit property. Upon discreet enquiry, the plaintiff learnt from the security personnel that those whose persons were intending to acquire the suit property surreptitiously beyond the knowledge and behind the back of the plaintiff from the said Suparna Jaikishan, who is a tenant and who has paid rent upto June, 2011 as aforesaid. Immediately the very next date, i.e. 29th May, 2011 the plaintiff intimated to the Hemchaya Apartment Society not to allow entry to any unknown strangers as well as not to make over possession to them since those persons were unknown to the plaintiff. The plaintiff finding the matter fishy filed suit being Title Suit No.1530 of 2011 on 30th May, 2011 before the 2nd Court of learned Civil Judge, Senior Division at Alipore against said Suparna Jaikishan for declaration and injunction with a prayer for restraining the said Suparna Jaikishan not to hand over possession of the suit property to the strangers. The plaintiff thereafter came to know from the security personnel of said Hemchaya Apartment building that some person on 12th June, 2011 visited the said building claiming ownership in respect of the

suit property and supplied certain papers to that effect. In such a situation, the plaintiff sent her letter through her advocate addressed to the Secretary of the said Hemchaya Apartment Society calling upon him to furnish copy of the papers or documents as submitted by those unknown persons claiming ownership of the suit property and also requested him not to effect any changes in the records of the Society for the reason that the plaintiff has never sold or transferred the suit property to anyone. The plaintiff also engaged as her agent one Mr. Dilip Halder to cause search of the records at the concerned registry office for searching if any document has been registered the suit property from the year 2007 when the plaintiff acquired the suit property. Plaintiff requested the said searcher to obtain all the certified copy of the documents registered on 11th April, 2008 and obtained the same on 24th June, 2011 and came to learn for the first time that two deeds of conveyance, being deed no.4400 of 2008 dated 3rd January, 2008 registered on 11th April, 2008 and deed no. 4397 of 2008 dated 2nd January, 2008 registered on 11th April, 2008 both before the Additional Registrar of Assurance-I, Kolkata, have been executed and registered by the defendant no.2 in favour of his wife, the defendant no.1 which is beyond the plaintiff's knowledge and behind her back. It was her specific case that plaintiff has no knowledge nor did she convey or transfer the same in any manner whatsoever and besides not a farthing has been taken by her as consideration from anybody or for that matter from the defendants at any point of time and/or in respect of the suit property.

66. In the plaint, the plaintiff contended that serious fraud has been committed upon the plaintiff by the defendants in collusion and in connivance with each other specially the defendant no.1 and defendant no.2 since the defendant no.1 is the wife of the defendant no.2 and both of them duped the plaintiff to part with her aforesaid flat taking advantage of situation explained as aforesaid.

67. It was specifically contended by the plaintiff that the plaintiff is the owner of the suit property by virtue of the registered deed of gift dated 15th October, 2007 registered in the office of A.D.S.R. at Sealdah being document no.760 of 2007 and document no.758 of 2007. It was plaintiff's specific case that there being no consideration received by the plaintiff, no title has been passed on to the defendant no.1 in respect of the suit property inasmuch as rampant fraud has been committed upon the plaintiff by the defendant inter se, for ends of justice and fair play an order of permanent injunction restraining the defendants from alienating, transferring or causing encumbrances or creating any third party right over the flat in question in any manner whatsoever should be passed and the declaration for that both the deeds are a product of fraud and since no consideration received by the plaintiff no title has passed on to the defendant no.1 in respect of the suit property.

68. The defendants/opposite parties denied all allegations by filing written statement and stated that the plaintiff voluntarily transferred the suit premises for valuable consideration by virtue of two deeds of conveyance and were

presented by the plaintiff before the Additional Registrar of Assurance, Kolkata on 11th April, 2008 for registration in respect of suit flat. Plaintiff also transferred a garage for car parking in the suit flat by another deed of conveyance with valuable consideration. The defendants stated that they had no knowledge about the proceeding and/or status of the plaint in respect of flat no.5F of 5th floor flat in the premises at 32A, Lower Range, Kolkata-700017. The plaintiff has no subsisting right, title and interest in the suit property. The defendant also denied the plaintiff's averments for causing necessary search of record and to obtain certified copy of the documents registered on 11th April, 2008. According to the defendants, it was created by the plaintiff for the purpose of the suit. The defendants also stated that plaintiff voluntarily transferred the suit property after receiving consideration money for as many as two deeds of conveyance wherein in respect of the suit property including car parking space (garage) on 2nd January, 2008 and 3rd January, 2008 respectively. It was also denied that plaintiff had no knowledge about the execution of the aforesaid two deeds of conveyance. According to them, no fraud was perceived upon the plaintiff as alleged. Plaintiff voluntarily executed the aforesaid deeds after receiving consideration money. The defendants stated that Suparna Jaikishan, the monthly tenant, has voluntarily surrendered her tenancy right in respect of the alleged suit flat as well as tenancy interest in the car parking space. It was also denied that plaintiff transferred the suit property without consideration money. It was also denied that there was no question of exchange of flats between the plaintiff and the defendants as alleged. The plaintiff is not entitled to get the declaration and permanent injunction as sought for. However, on the very day of moving, the learned Trial Court passed an interim order on 29th July, 2011. Learned Court was of the prima facie found that the suit property is in occupation of one tenant namely, Suparna Jaikishan. There is allegation of practising fraud upon the plaintiff. It is a fact that there is no description in what manner the consideration price for conveyance in respect of the suit property as well as in respect of the property at 10, Gurusaday Road, Kolkata, was paid. It appears from the conveyance deed that consideration price in each of the deeds mentioned as Rs. 15 lacs. Learned Court below was of the specific view that such consideration money shall not pay in cash. The mode of transfer of consideration money ought to have been mentioned to show that the transaction is a bona fide one but in the instant case there is no description in what manner consideration money was paid. In that background a specific allegation of fraud was raised. Learned Court below was of the view that in absence of description of mode of payment of consideration price supports the plaintiff's case made out in the plaint and it was the learned Court's specific finding that the plaintiff has made out a good prima facie case. If the possession of the plaintiff through her tenant is taken she will suffer irreparable loss and injury. According to the learned Court below, balance of convenience and inconvenience is in favour of the plaintiff and therefore, the learned Court restrained the defendants from transferring, alienating, encumbering the suit property in any manner and also restrained the defendants from disturbing in the suit property till 24th August, 2011 which was again

extended. Learned Court recorded that the plaintiff is in possession of the suit property through her tenant, Suparna Jaikishan. There is no dispute in that regard. The property was under occupation of Suparna Jaikishan as a tenant since long before the date of the alleged two deeds allegedly executed by the plaintiff as claimed by the defendants. The order although an ex parte order was questioned by the defendants before the appellate court.

69. The learned Appellate Court at the time of disposal of the Misc. Appeal held that the plaintiff/petitioner is in possession of the suit property till June, 2011 through her tenant, Suparna Jaikishan and the tenant paid rent to the plaintiff till June, 2011 which is apparent from the documents placed before the learned Trial Court. It was also recorded by the learned Appellate Court that as many as five deeds were executed within a short span of ten days, all in the month of January, 2008 by the plaintiff in favour of the defendants, which includes the suit property. Yet till June, 2011 tenant of the plaintiff/petitioner was paying rent to the plaintiff. This was the fact brought before the learned Trial Court and also before the Appellate Court. The learned Appellate Court recorded that the alleged deeds were executed by the plaintiff/petitioner under misconception that the said deeds were deed of exchange and not the deed of sale. It was specific finding that both the courts that the suit property was not being possessed by the opposite parties/defendants, so not only the prima facie case made out by the plaintiff/petitioner but also balance of convenience and inconvenience was in favour of issuing interim injunction and on that basis interim order passed by the learned Trial Court was confirmed by the learned Appellate Court on the appeal filed by the defendants/opposite parties. Accordingly, Misc. Appeal was disposed of on 20th December, 2011. However, the interim order was directed to be continued till the disposal of the injunction application made by the plaintiff under Order 39 Rules 1 and 2 of Code of Civil Procedure. It is admitted fact that during continuance of the interim order the defendants/opposite parties took possession of the flat from the tenant of the plaintiff/petitioner on 27th December, 2011 in violation of the aforementioned two orders i.e. the interim order passed by the learned Trial Court on 29th July, 2011 and thereafter the learned Appellate Court dated 20th December, 2011. Since the petitioner was dispossessed by eviction of her tenant in clear contravention of the order passed by both the learned Trial Court as well as Appellate Court, petitioner was compelled to file another application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure for getting back possession of the suit property.

70. While disposing both the applications, learned Trial Court although passed order that the opposite parties/defendants were specifically restrained from transferring, alienating, encumbering the suit property and were further restrained from disturbing the peaceful possession and held during pendency of the suit the tenant of the suit premises, Suparna Jaikishan had surrendered her tenancy in favour of the defendant no.1. However, learned Trial Court framed two issues ? whether the plaintiff has strong case for trial and if that is so, it shall be

of a highest standard of a prima facie case that is normally required for a prohibitory injunction, it is necessary to prevent irreparable and serious injury which normally cannot be compensated in terms of money. The learned Court found that the plaintiff most definitely has a triable issue at hand and has at this stage proved strong prima facie case in her favour and as such, passed an order of restraint against the defendants/opposite parties by order of temporary injunction till the disposal of the suit from transferring, alienating, assigning the suit premises but unfortunately refused the prayer for mandatory injunction to put back the plaintiff in possession of the flat holding that the defendants are admittedly in possession of the suit premises and whether taking possession of the flat is good, bad or lawful or illegal would be decided in the suit, therefore, disallowed the prayer for restoration of possession in favour of the petitioner. The learned Court further held alienating or transferring of the suit premises is likely to cause more prejudice to the plaintiff and as such, the plaintiff's inconvenience likely to arise from withholding injunction will be better than which is likely to arise from granting it. However, both the applications filed by the plaintiff/petitioner under Order 39 Rules 1 and 2 were disposed of on 2nd June, 2012. The plaintiff filed Misc. Appeal against the rejection of their application for mandatory injunction and the defendants filed Misc. Appeal against the order of restraint granted by the learned Trial Court restraining the defendants to transfer alienate or encumber the property in any manner. Both the appeals were heard. The learned Appellate Court while hearing both the appeal have in fact held a mini trial and decided that gift deed of Ajit Sarkar in favour of plaintiff was executed on 15th October, 2007 which was completed on 5th February, 2008 and as per deed no.4397 of 2008 and 4400 of 2008 it revealed that both the deeds were executed on 2nd January, 2008 and 3rd January, 2008 respectively but both the deeds were registered on 11th April, 2008. According to the learned Appellate Court that after completion of registration on 5th February, 2008, the process is complete and the registration of both the deeds have been completed. Accordingly, findings of the learned Trial Court "that the execution of two deeds are doubtful" is of no substance. The learned Appellate Court made a serious mistake recording that plaintiff do not plead that she is an illiterate and pardanasin lady and she had no knowledge of the deed. Unfortunately, the learned Appellate Court misdirected itself. This is specific case of the plaintiff in the plaint that she is an illiterate village lady and the defendants have practised fraud, the plaintiff was made to believe the defendants have prepared two exchange deeds which the plaintiff is executed. There is serious allegation of fraud. Plaintiff was given a flat situated at Flat No.5C, in the 5th floor at 32A Lower Range, P.S. Karaya, Kolkata-700017 in lieu of the suit property in question for which allegedly two sale deeds were executed. There is another suit pending between the defendants and the person to whom the flat situated at 32A, Lower Range was sold by the plaintiff. All through it was found by the learned Court that the plaintiff was constructive position of 10, Gurusuday Road flat and garage through her tenant, Suparna Jaikishan, but failed to consider that in clear violation of all three orders possession was taken. Learned Appellate Court

misdirected itself and failed to go through the findings and conclusions arrived at by the learned Trial Court on two earlier occasions and learned Appellate Court on one occasion. Moreover, there is specific allegation of fraud. The details of fraud was described in the plaint. It is on record that the petitioner/plaintiff was in possession through her tenant, Suparna Jaikishan. There was interim order. Under no circumstances, the defendants could have taken possession of the flat whether by surrender or by coercion or by any other means, from the tenant of the plaintiff/petitioner. The learned Appellate Court failed to understand that the plaintiff has made out a triable case which is more than a prima facie case and since the petitioner was in constructive possession through her tenant, dispossession of the plaintiff by the defendants would definitely cause prejudice to the rights and contentions of the petitioner in all respect.

71. At the very outset, this Court is to consider primary purpose of granting temporary injunction is the preservation of the property in dispute till legal rights and conflicting claims of the parties before the Court are adjudicated. The Court in exercising of sound judicial discretion can grant or refuse the interim relief and for that reason the Court is to see whether the plaintiff is able to make out a prima facie case or not and balance of convenience lies in favour of the plaintiff or not and in case of refusal plaintiff would suffer irreparable loss or not.

72. A prima facie case, however, should not be confused with prima facie title or a case proved to be hilt. It is not part of the court's function at the initial stage to try to resolve conflict of claim and at the stage of granting interim order, court should not decide complicated question of fact or of law which called for detailed argument, evidence and mature consideration. All these matters are to be dealt with at the time of trial of the suit. In other words, the Court should not examine the merit of the case closely at the stage because it is not excepted to decide the suit finally at the interlocutory stage, on the contrary, it is small state for the progress of the suit. In deciding the prima facie case, the court is to be guided by plaintiff's case as revealed in the plaint, affidavit and other materials placed by him or her to balance of convenience is to be tested with reference to comparative mischief or hardship or inconvenience which likely to be caused to the plaintiff/petitioner for refusing of proper and temporary injunction. Irreparable loss or injury is to be considered with reference to loss which cannot be adequately remedied by damages if the injunction is not granted. In assigning these three tests with reference to this case as well as the impugned order and other equitable factors it appears to this Court that the plaint discloses real and substantial dispute and the plaintiff has perspective to go for trial and the dispute in question made adjudication by a court of law. That apart it further appears that the plaintiff is facing imminent danger not only for being dispossessed in clear violation of three injunction orders but also against transfer and/or encumbrances against the property in question.

73. The reason which has been assigned by the appellate court is in effect on conclusion which touches fate of the suit. It is well-settled that at the time of

consideration of injunction, court has to consider whether there is a serious question to be tried or not and whether there is bona fide contention of the plaintiff or not with that if injunction is not granted whether or not plaintiff will face any loss or damages and also weigh the respective contention of the parties and come to a logical conclusion with proper justification for his decision. At the time of consideration of prayer for temporary injunction Court is not supposed to hold a mini trial. If at this stage court holds a mini trial in arriving the decision of interlocutory application i.e. bad in law and also not permissible. After a party succeeds to show or establish his bona fide colour of right has been infringed and that could be injustice to her then the injunction should be granted.

74. On perusal of the impugned order it appears to this Court that the learned appellate court crossed all limits and ineffect held a mini trial and has gone to decide the suit that too without giving opportunity of proving the plaint case of adducing evidence. In this case it is to be kept in mind that the plaintiff has made a specific case of fraud in her plaint and it was alleged that in the guise of execution of exchange deeds, two sale deeds were got to be executed fraudulently by misrepresentation. It was also specifically stated that the plaintiff/petitioner is an illiterate village lady. The defendant no.2/opposite party in this revisional application is a broker and did all mischief in collusion and in connivance with the defendant no.1. Moreover, from the two deeds questioned by the plaintiff/petitioner it appears that although two deeds were executed on 2nd January, 2008 and 3rd January, 2008 but the content of the deeds record a deed of gift which was registered on 2nd May, 2008. Moreover, both the deeds disclosed do not reveal how the consideration money passed. The consideration money to the tune of Rs. 15 lacs each is to be passed to the plaintiff unless the amount is passed the transaction would not be completed. The learned Court also failed to consider constructive possession of the plaintiff/petitioner through her tenant. However, at this initial stage regard being had to the scope and ambit of appeal referred under Order 43 of C.P.C. The learned appellate court ought to have refrained it from making any superficial comment upon the subtle question of validity and legality of the deed in question on the basis of which parties to the proceeding put forward their claim that right, title and interest over the suit property as because it may run the risk of prejudging the merit of the case and it would tantamount holding of mini trial at the interlocutory stage. This being the position and in view of the discussion made hereinbefore this Court is of the view that plaintiff is able to make out a strong prima facie case and the plaintiff/petitioner raised a substantial question which needs judicial prove and a decision and merit. Plaintiff/petitioner also had been able to show that if the defendants/opposite parties are left unfettered her apprehension of dispossession and creation of third party interest over the schedule of property may be relied and in that event she would have a face of disaster consequence. For that reason the plaintiff/petitioner need a cool whip of prohibitory order of injunction restraining the defendants/opposite parties from transferring, alienating and encumbering the property in any manner whatsoever and to restore back possession,

otherwise the damages and/or loss which she would have to face cannot be adequately compensated in any way. The learned Trial Court has committed a colossal error by not considering the physical possession of the property in question which is fortified by three prima facie views taken by three learned courts thereby granting three interim orders of restraint against the defendants from dispossessing the plaintiff from the suit property which the plaintiff/petitioner has constructive possession over it. The learned Appellate court failed to obey the common of law and failed to appreciate the materials on record in its proper perspective. Learned Appellate court unnecessarily at the zygotic stage of proceeding has gone to a complicated and crucial question of fact and law and prejudge the merit of the case.

75. In the opinion of this Court learned appellate court acted disregard with the settled principle of law and as such the appellate court was not justified thereby setting aside the order of injunction granted by the learned trial court and also not allowing the appeal filed by the plaintiff/petitioner seeking permanent injunction for reinstatement of the suit property, resultantly that very refusal order would completely not only cause serious prejudice to the plaintiff/petitioner but also non-suit her. Therefore, the learned appellate court acted against the said legal possession taking note of totality of the circumstances and materials on record. The plaintiff/petitioner should be restored back the suit property till her legal right over the property in question is judicially settled and the defendants/opposite parties should be restrained from transferring alienating or encumbering the suit property in any manner whatsoever.

76. In the above circumstances, the impugned order is liable to be set aside and accordingly the order impugned is set aside.

77. In my considered opinion, the order impugned passed by the learned Appellate Court allowing appeal filed by the defendants/opposite parties challenging the interim order of restraint granted by the learned Trial Court and also dismissing the appeal filed by the plaintiff for restoration of possession in favour of the plaintiff is illegal and unfair. There is material irregularity and illegality in the order passed by the learned Appellate Court. The materials and the pleadings available on record clearly show that the plaintiff/petitioner crossed the three hurdles i.e. prima facie case in her favour, balance of convenience is also in her favour and she will be suffering irreparable loss and injury in case she is dispossessed from her possession over and in respect of the flat.

78. Accordingly, the impugned order passed by the learned Appellate Court on 22nd May, 2015 is set aside. The order of restraint passed by the learned Trial Court is restored. The application filed by the plaintiff/petitioner under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure for restoring back possession to the plaintiff is allowed. The defendants are directed to restore back possession in favour of the plaintiff within one week from the date of this order, failing which the plaintiff/petitioner is permitted to take appropriate step for removing defendants/opposite parties with police help. Officer-in-Charge of

the concerned police station and the concerned Deputy Commissioner of Police are directed to render police help to the plaintiff/petitioner for removing the defendants from the suit property.

79. The petitioner/plaintiff is also directed not to part with possession till disposal of the suit.

80. Both the revisional applications are disposed of in favour of the plaintiff/petitioner.

81. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on usual undertakings.