

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.891 OF 2015
WITH
CIVIL APPLICATION NO.1104 OF 2015**

Junaid Iqbal Memon ... Appellant
vs.
Najma Aslam Merchant and Another ... Respondents

**AND
APPEAL FROM ORDER NO.892 OF 2015
WITH
CIVIL APPLICATION NO.1082 OF 2015**

Firoz Mohammed Memon and Others ... Appellants
vs.
Najma Aslam Merchant and Another ... Respondents

Mr. P.K. Dhakephalkar, Senior Advocate a/w. Mr. S.K. Srivastav,
Ms. Simeen Shaikh and Ms. Rashmi Patil i/b. M/s. S.K. Srivastav
& Co., for the Appellant in A.O.No. 891 of 2015 and for
Respondent No. 2 in A.O. No. 892 of 2015.
Ms. Smita Tanna, for Appellant in A.O. No. 892 of 2015 and for
Respondent Nos. 2 to 4 in A.O. No. 891 of 2015.
Mr. N.A. Ghatte, for Respondent No. 1 in both the matters.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **24th NOVEMBER, 2015**

P.C.:

. In these two Appeal from Orders, the order dated 7th April,
2015 passed by the Civil Judge, Senior Division, Satara in Special
Civil Suit No. 177 of 2014 is challenged.

2. The Plaintiff who is the Respondent No. 1 is a paternal aunt of the present Appellant Junaid in Appeal from Order No. 891 of 2015 and also the relative of the other Appellants in Appeal from Order No. 892 of 2015. Thus, all the Appellants were the Respondent Nos. 1 to 4 in Special Civil Suit No. 177 of 2014.

3. It is case of the original Plaintiff that she is the sister-in-law of the notorious gangster Iqbal Mirchi. The Appellant Junaid is the son of the deceased Iqbal Mirchi and other Appellants are his relatives. Iqbal Mirchi died on 14th August, 2014. Prior to that, in the year 2012, the original Plaintiff, her husband and son were under apprehension to execute some documents namely gift deed dated 15th June, 2012, deed of dissolution of partnership dated 1st April, 2012, irrevocable Power of Attorney dated 18th July, 2012, Memorandum of Understanding dated 18th July, 2012 executed in favour of the Appellants. It is the case of the Plaintiff that she was made to execute these documents and signed the documents under terror of her brother in law. She could not resist and challenge those documents during the life time of her brother in law but now after his death, she filed a suit before the Civil Judge, Senior Division, Satara.

4. In that suit, she has moved an application (Exhibit 5) for interim stay and injunction to those documents and no third party right or any sort of charge, encumbrance is to be created by the Defendants and if at all any encumbrances created then that is not binding on her. The learned Civil Judge allowed the said application. Hence, the present Appeal from Order.

5. The learned senior counsel for the Appellant Junaid has submitted that the documents were executed in the year 2012 and no challenge was given to those documents till filing of the suit though Iqbal Mirchi died on 14th August, 2014. He further submitted that no specific instances of fear and fraud are mentioned but there are general averments made by the Plaintiff. He submitted that the learned Civil Judge has accepted all the submissions of the Appellants however, on one ground i.e. all the documents were executed on one and the same day, he allowed the application. The finding of the learned Judge is not correct and is to be set aside. He further submitted that the husband of the Plaintiff was a Custom Officer and was working with the mother of the Appellant and Plaintiff and her family were staying at Dubai along with the mother of the Appellant.

6. The learned counsel for the Respondents i.e. original Plaintiff opposed the Appeal. However, he is not in a position to explain what are the specific averments and the instances of coercion or fraud or misrepresentation. In view of this, after going through the order passed by the learned Judge, the submissions of the learned senior counsel for the Appellants are found correct. The learned Judge has considered only one ground to allow the application i.e. all the documents have executed on one and the same day. However, in para 10, the dates of the execution of the various documents are mentioned and they are different though the year is sane. Moreover, it appears from the order that the Plaintiff has received Rs. 15 lacs by cheque towards the dissolution of the partnership and the said cheque was encashed by her. So also 20250 shares of one hotel at Mahabaleshwar were transferred by way of gift deed in favour of the Appellants.

7. In view of the above, the following order is passed.

a) The impugned order dated 7th April, 2015 passed by the Civil Judge, Senior Division, Satara in Special Civil Suit No. 177 of 2014 is hereby set aside.

- b) The status quo and the injunction granted is vacated. However, if any third party interest, charge or encumbrance is created with the suit property i.e. Plot No. 71 C, 490-A during the pendency of the suit, then it will be subject to the order on the suit plot.
- c) In the event of any future transferee, the Appellants are bound to disclose this order to the transferee.
- d) Accordingly the Appeal stands disposed of.

(MRS.MRIDULA BHATKAR, J.)