

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 44 OF 2016.

AND

APPEAL FROM ORDER NO. 45 OF 2016.

APPEAL FROM ORDER NO. 44 OF 2016.

- 1 SHRI NARCINVA DAMODAR NAIK,
M/s. N.D. Naik, V.N. Naik Road,
Fatorda, Margao, Goa.
- 2 SHRI ASHWINIKUMAR DAMODAR
NAIK,
M/s. N.D. Naik, V.N. Naik Road,
Fatorda, Margao, Goa.
- 3 SMT. LAXMI NARCINVA NAIK,
r/o 'Saaket', H. No. 15/1940,
Marlem Hill, Margao, Goa 403 601
- 4 SMT. RADHA ASHWINIKUMAR NAIK,
r/o 'Vrundavan', Marlem Hill,
Margao, Goa 403 601
(All are major of age)

.... Appellants

Versus

- 1 SMT. RUKMA ABHIJIT SADEKAR,
39 years of age, r/o Flat No. F-402,
Vasant Vihar, Taleigaon-Caranzalem
Link Road, Caranzalem, Tiswadi,
Goa 403 002
- 2 SHRI PRADIP MAHATME,
301/302, Kamat Towers,
EDC, Patto Plaza Complex, Panaji,
Goa-403 001.
- 3 SHRI DAMODAR NARCINVA NAIK,
M/s. N..D Naik, V. N. Naik Road,
Fatorda, Margao, Goa.
- 4 SMT. INDIRA DAMODAR NAIK,
r/o 'Saaket', H. No. 15/1940,
Marlem Hill, Margao, Goa 403 601
- 5 DR. ABHIJIT P. SADEKAR,
1st floor, Office No.22, Navelkar
Trade Centre, M.G. Road Panaji, Goa

-403 001.

- 6 SMT. AMITA PRADEEP TALAULICAR,
r/o H.No. 870, 'Swagat', D.B. Road,
Miramar, Panaji, Goa 403 001
- 7 SHRI PRADEEP M. TALAULICAR,
r/o H.No. 870, 'Swagat', D.B. Road,
Miramar, Panaji, Goa 403 001 Respondents

Shri S. G. Dessai, Senior Advocate with Shri Shivan Desai Advocate for the appellants.

Shri D.J. Pangam, Shri A. Gomes Pereira and Ms. Prachi Sawant, Advocates for the respondent no.1.

Shri Sudin Usgaonkar, Senior Advocate with Ms. Tanvi Ghanekar, Advocate for the respondent nos.3 and 4.

Shri P. Lotlikar, Advocate for the respondent nos.6 and 7.

AND

APPEAL FROM ORDER NO. 45 OF 2016.

SHRI PRADIP MAHATME,
301/302, Kamat Towers,
EDC, Patto Plaza Complex, Panaji,
Goa-403 001. Appellant

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Hill, Margao, Goa 403 601
- 10 SMT. RADHA ASHWINIKUMAR NAIK,
r/o 'Vrundavan', Marlem Hill,
Margao, Goa 403 601

..... Respondents

Shri V. A. Lawande, Advocate for the appellant.

Shri A. Gomes Pereira, Advocate for the Caveator.

CORAM : NUTAN D.SARDESSAI, J.

RESERVED ON : 15th JULY, 2016.

PRONOUNCED ON : 18th July, 2016.

JUDGMENT:

Heard.

2. Admit.

3. Ms. Prachi Sawant, learned Advocate waives service of notice on behalf the respondent no.1, Ms. Tanvi Ghanekar, learned Advocate waives service of notice on behalf of the respondent

nos.3 and 4 and Shri P. Lotlikar, learned Advocate waives service of notice on behalf of the respondent nos.6 and 7 in A.O. No. 44 of 2016. Shri A. Gomes Pereira, learned Advocate waives service of notice on behalf of the Caveator in A.O. No.45 of 2016.

4. Shri S. G. Dessai, learned Senior Advocate came to be heard on behalf of the appellants who submitted that in terms of Order XXXIX Rule 3 of Civil Procedure Code ('C.P.C.' for short) no ex-parte reliefs could have been granted as a matter of course. He adverted to the reliefs claimed in the plaint filed at the instance of the respondent no.1 and submitted that the properties referred to therein which were a part of the Annexure-II belonged to the parents who were living. The partnership and the company in respect of whom the injunctory reliefs were sought were not made parties to the plaint. The relief claimed in respect of which the learned trial Judge secured the respondent no.1 with the relief of injunction pertained to a Memorandum of Understanding dated 24/10/2014 which was in respect of the properties of the partnership and the company and not the individual properties of her parents i.e. the respondent nos.3 and 4. Besides the Annexure-II related to the multiple properties unlike the plaint which did not contain any averments on the various properties in dispute or the right acquired by the plaintiff/respondent no.1. No

cause of action was disclosed in the plaint and therefore the plaint was liable for rejection in terms of order VII Rule 11 of C.P.C.

5. Shri S. G. Dessai, learned Senior Advocate for the appellant also adverted to the Annexure-I and contended that no right was spelt out in the plaint to the property contained therein. The impugned order dated 07/07/2016 was served on them on 08/07/2016 and thereafter on account of the intervening holidays, the appellant could apply for the certified copies on 11/07/2016 who had thereafter moved this Court with promptitude to assail the impugned order. He relied in **Morgan Stanley Mutual Fund v/s. Kartick Das with Arvind Gupta v/s. Securities and Exchange Board of India and others** [Civil Appeal Nos.4584 and 4587 of 1994), **Sopan Maruti Thopte and another v/s. Pune Municipal Corporation and another and Shaikh Abdul Aziz and others v/s. Bombay Municipal Corporation and others** [Writ Petitions no. 4765 to 4767 of 1995 and A.C. No. 477 of 1994] **and GL Asia Mauritius II Cayman Limited and orders v/s. Pinfold Overseas Limited and another** [Writ Petition No. 676 of 2010] again to buttress his plea that no relief as granted could have been issued in favour of the respondent no.1 by the Trial Court.

6. Shri S.G. Dessai, learned Senior Advocate for the

appellants then adverted to the Memorandum of Understanding entered into by the parties and submitted that the properties of the respondent nos.4 and 5 were not a part of the Memorandum of Understanding and yet the relief was granted in favour of the respondent no.1. The Memorandum of Understanding was executed on 24/10/2014 and yet the first notice came to be issued at the instance of the respondent no.1 on 01/06/2015 and a legal notice followed thereafter on 04/09/2015. There were no incidents shown by the respondent no.1 to precipitate the suit and the application for injunction. The appellant no.1 had executed a Gift Deed of a plot of 610 sq.mts. of the larger properties in favour of the respondent no.6 on 27/08/2015 and which was much prior to the receipt of the legal notice dated 04/09/2015. There were no changes in the circumstances even thereafter to precipitate the suit and the relief of injunction. Besides the respondent no.1 did not hold any interest in the partnership of M/s. N. D. Naik and could not claim any relief.

7. Shri S. G. Dessai learned Senior Advocate for the appellants submitted that the pleadings as carved out at paragraphs No.29 to 34 were not at all relevant and did not indicate in what way they were material to maintain the suit. The respondent no.1 was not a partner of M/s. N.D.Naik. The

Memorandum of Family Settlement dated 23/03/1994 was not at all relevant to the case at hand and her presence therein though as a minor at the relevant time was probably not to create any problem in the future. He also adverted to the letters written by the respondent no.1 to the District Registrar and the bank apart from the e-mail to show the lack of bonafides of the respondent no.1 and yet processing the suit against them. The learned trial Judge was not at all justified in granting the ex-parte relief in respect of the properties not belonging to the plaintiff. Besides no reliefs could be granted without making the banks and other financial institutions as the parties to the suit. The impugned order was without any basis and liable to be set aside.

8. Shri V. A. Lawande, learned Advocate for the appellant in his appeal opened his arguments that the appellant was a Chartered Accountant who had no right to the properties nor any interest therein and yet the plaintiff had claimed reliefs and which were granted in her favour. The impugned order was therefore arbitrary and perverse. The trial Court disclosed a total non-application of mind while passing the impugned order which was liable to be quashed and set aside. He relied on **Vedant Fashions Pvt. Ltd. V/s. Smt. Rajul Devi** [Writ Petition Nos.33158/2014 and 33300/2014(IPR)], **Mr. R.K. Jain v/s. Sri P.G. Chacko** [Writ

Petition No. 16118/2013(GM-CPC)] and **The Secretary and Curator, Victoria Memorial Hall v/s. Howrah Ganatantrik Nagrik Samity and others** [(2010)3 SCC 732] and concluded his arguments that no injunctory relief could be granted against the professionals for the professional advice rendered by them. It was apart from the fact that no averments were made against the appellant in any way in the plaint and pressing for the reversal of the order.

9. Shri S. M. Usgaonkar, learned Senior Advocate for the respondent nos.3 and 4 in the Appeal from Order No.44 of 2016 substantially adopted the arguments of Shri S.G. Dessai, learned Senior Advocate for the appellants and quantified his arguments that the respondent no.1 had misled the Court and snatched the ex-parte order. She had tried to mislead the Court knowing fully well that her parents were living and thus the impugned order was liable for a reversal. Shri P. Lotlikar, learned Advocate for the respondent nos.6 and 7 submitted that no reliefs were claimed against them in the suit and yet by granting the relief (a), they were indirectly affected when they were otherwise not concerned with the properties and the parties. The Gift Deed in their favour was a part of the property from the annexure-II and the respondent no.1 who had no interest in the Gift Deed could not

also envelop the respondent nos.6 and 7 while seeking an all encompassing order against the respondents. The trial Court had to see if grounds were made out for the grant of temporary injunction and when there were no findings on the prima facie case, the balance of convenience and irreparable loss the discretion exercised by the trial Court was arbitrary and fanciful justifying an interference with the order.

10. Shri D. J. Pangam, learned Advocate for the respondent nos.1 and 5 built up his case on the foundation of that laid by the appellants and the respondent nos.3 and 4 to contend that it conveyed that they were claiming exclusive ownership of all the properties. No separate appeal was filed by the respondent no.3 to challenge the order of injunction and therefore the appeal of the appellants was not maintainable. He adverted to the Memorandum of the Family Settlement dated 23/03/1994 being a vital document to show the interest of the respondent no.1/ plaintiff in all the properties and how under the subsequent Memorandum of Family Settlement dated 24/10/2014, shortly after her marriage there was a reconstruction of the shareholding pattern whereby the respondent no.1 was completely kept out from what was bestowed upon her by the family arrangement in 1994 and quite on the contrary a liability was foisted on the respondent no.1. His next

contention was that the impugned order need not have been elaborate and what was necessary was the subjective satisfaction of the Judge which was apparent from the records. He relied in **A. Venkatasubbaih Naidu v/s. S. Chellappan and others** [(2000) 7 SCC 695] to support his contention and submitted that it was not as if the learned Judge had passed the order mechanically and quite on the contrary there was due a application of mind.

11. Shri D. J. Pangam, learned Advocate for the respondent no.1 submitted that the impugned order satisfied all the requirements of an order under Order XXXIX Rule 3 of C.P.C. The appellants had not been able to show what prejudice was caused to them by the impugned order. They could very well go before the trial Court on the 19th instant when the matter was listed and seek necessary reliefs to vacate the injunction order. Quite on the contrary in case the order was vacated then there was every possibility that the respondent no.3 would alienate, transfer the properties and cause serious prejudice to the respondent no.1 as also the appellants who were in control of the firms and could reconstitute, effect transfer etc. There was no delay and latches as claimed by the appellants and substantial time was taken up to obtain the records. It was not the case of the appellants that no prejudice was caused to them due to the delay and the latches.

They had rather created a new entity which was not permissible and entitling the respondent no.1 to the said reliefs.

12. Shri D. J. Pangam, learned Advocate for the respondent no.1 also adverted to Article 1787 of the Family Laws to contend that not more than 50% of the share could be disposed off by virtue of the Deed of Settlement and relied in **Joao Cardoso (Deceased) represented by his legal representatives v/s. Ethelvina Cardoso Rodrigues and another** [2009 (5) Bom. C.R. 51]. At the highest the party aggrieved was the father i.e. the respondent no.3 who alone could file an appeal who had abstained from doing so. It was also his contention that Order XLI Rule 4 C.P.C. could not be pressed into service. The appellants and the respondent no.3 had no common ground to assail the impugned order and lastly the powers had to be invoked sparingly and the possibility of contradictory decree could not be ruled out. In short, it was his contention that neither the appellants nor the lone appellant in the Appeal from Order No.45 of 2016 were affected by the orders and no relief can be granted in their favour.

13. Shri V. A. Lawande, learned Advocate for the appellant rejoined to submit that it was not open to the respondent no.1 to contend that the appellant was not prejudiced. He clearly

distinguished the judgment in **A. Venkatsubbiah Naidu** (supra) which had considered all the aspects while passing the ex-parte order. Shri S. G. Dessai, learned Senior Advocate submitted that the trial Judge had not assigned any reason to support the impugned order and Article 1784 was not attracted to the case at hand. The appellants were affected by the order which was granted in terms of prayer clauses (a) and (d) and therefore the appeal lay and the order was liable for reversal.

14. **Morgan Stanley** (supra) spelt out the guiding principles in relation to the grant of an ad-interim injunction in such areas of the functioning of the capital market and public issues of the corporate sectors and whether certain 'venu restriction clauses' would require to be evolved judiciously. The guiding principles were that the ex-parte injunction could be granted only under the exceptional circumstances. The factors which should weigh with the Court in the grant of ex-parte injunction were-

(a) where irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of ex-parte injunction would involve greater injustice than the grant of it would involve;

(c) the court would also consider the time at which the plaintiff first had notice of the act complained so that the

making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex-parte injunction;

(e) the court would expect a party applying for ex-parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex-parte injunction would be for a limited period of time.

(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.

15. In **Sopan Thopte** (supra) a Division Bench of this Court noticed that in many cases subordinate Courts are granting ad-interim reliefs without following the mandate of Rule 3 of Order XXXIX of the C.P.C. Only under exceptional circumstances ex-parte stay order or interim relief is required to be granted by recording reasons. But recording of reasons should not be an empty formality, such as by mentioning that the record has been seen and the plaintiff establishes prima facie case. The Courts should bear in mind the foregoing principles enunciated in the case of **Morgan**

Stanley Mutual Fund(supra). Their Lordships also observed that in their view passing an interim order indiscriminately and without apparent and due application of mind, which has the effect of allowing the plaintiff to continue to enjoy the fruits of his illegal actions including unauthorised construction tends to lower the Court's prestige and clearly undermines the Rule of Law while once again emphasizing the need to see that the prima facie case is made out before the Court grants an ad-interim injunction.

16. In **GL Asia Mauritius II Cayman Limited** (supra) the learned Single Judge of this Court held that he could not accept the submissions of the learned Judge that because there was an agreement to purchase 40 percent of the shares of the Petitioner no.3-Company who had 100 percent shares with the Respondent no.2, would mean that the Respondent no.1 would acquire the co-ownership rights to the immoveable property. It was further held that a shareholder acquires a right to participate in the profits of the Company but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the Company. A shareholder does not have any right to the properties of the Company and there is nothing in the Companies Act to warrant the assumption that a share holder who holds shares by itself acquires any interest in the property of the Company who is a juridical

person entirely distinct from the shareholder.

17. In **The Secretary and Curator, Victoria Memorial Hall** (supra), the three Judge Bench of the Hon'ble Apex Court reiterated the settled legal proposition that not only administrative but also judicial Orders must be supported by reasons recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice.

18. **Vedant Fashions Pvt. Ltd.** (supra) challenged in the Writ Petitions the ex-parte order passed by the trial Court under Order XXXIX Rules 1 and 2 read with Section 151 of C.P.C. whereby ad- interim ex-parte temporary injunction was passed against the defendants restraining them accordingly. The trial Court had passed the ex-parte order against the petitioner therein and in which context the learned Single Judge of the Karnataka High Court examined Order XXXIX Rule 3 C.P.C. which mandates

that the Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application shall be given to the opposite party: provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay and require the applicant-

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with-

(i) a copy of the affidavit filed in support of the application; (ii) a copy of the plaint; and (iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

19. In **Vedant Fashions Pvt. Ltd.** (supra), the learned Single Judge had extracted the order under challenge to ascertain whether the trial Court had complied with the requirements of the

proviso while dispensing with the notice to the defendant while granting an ex-parte order of temporary injunction and from a reading of the impugned order, it was clear that, nowhere reasons had been recorded as to why the trial Court was of the opinion that the injunction had to be granted by dispensing notice to the respondent or that non-grant of an injunction would be defeated by delay if notice was to be ordered by the respondent. The learned Single Judge also found that the impugned order was bald, laconic and bereft of any reason and the learned trial Judge had not even made a brief reference to the facts of the case to arrive at a conclusion that there was a prima facie case for consideration and about the balance of convenience being in favour of the plaintiff and whether she would suffer any reparable loss in case of refusal of the ex-parte order and passed the impugned order mechanically in that context. The impugned order had to be quashed on the short ground that there was non-compliance of Rule 3 of Order XXXIX of the CPC.

20. In **R. K. Jain** (supra), an ad-interim ex-parte order of temporary injunction passed by the Additional City Civil & Sessions Judge, Bangalore was questioned in this Writ Petition. The respondent had instituted the suit for the grant of mandatory injunction, permanent injunction and damages and also moved an

application for the grant of the ad-interim ex-parte temporary injunction in terms of Order XXXIX Rule 1 of C.P.C. to restrain the defendants from printing, publishing or spreading any defamatory statement in any manner or material circulated or any other reporter or through any print media to defame the plaintiff. The learned Single Judge of the Karnataka High Court had extracted the Order under challenge where the action which was canvassed that it was ex-facie arbitrary having been passed in utter disregard of the mandate under Rule 3 of Order XXXIX C.P.C. The learned Single Judge extracted Order XXXIX Rule 3 of C.P.C., perused the impugned order and found that the trial Judge had merely taken a note of the contention of the Counsel and granted an ex-parte temporary injunction.

21. In **Vedant Fashions Pvt. Ltd.** (supra), the learned Single Judge found that the impugned order was bereft of any reason and the trial Judge without reference to any material had assumed that the plaintiff had a prima facie case. He had not touched upon the question where the balance of convenience lies, nor had he dealt with the question whether the plaintiff would be put to irreparable loss in case injunction had not been granted. He had also not recorded whether the plaintiff had approached the Court without any delay and held that the findings were perverse

and capricious on the temporary injunction granted mechanically.

A. Venkatasubbaih Naidu (supra), was an appeal by special leave at the instance of the plaintiff who was initially secured by an ex-parte interim order of injunction against some of the defendants and obtained it. Those defendants rushed to the High Court to get that order quashed and succeeded in their respective endeavour. The Appellant had filed the suit for a decree of permanent injunction to restrain the defendant Nos.1 to 5 from dispossessing him and moved an application under Order XXXIX Rules 1 and 2 of C.P.C. seeking an ad-interim relief ex-parte.

22. In **A. Venkatasubbaih Naidu** (supra), the Assistant Judge of the City Civil Court, Chennai passed the order and granted ad-interim injunction recording that the Order XXXIX Rule 3 of C.P.C. had to be complied with. The first respondent and the respondent Nos.2 to 5 invoked the revisionary jurisdiction of the High Court invoking the Article 227 of the Constitution alleging that they purchased the property by different sale documents and were in possession and enjoyment. The learned Single Judge of the High Court observed that the Trial Court ought not to have granted an order of injunction at the first stage itself and that such a course is impermissible under Order XXXIX Rule 3A of the C.P.C. and set aside the injunction order.

23. In **A. Venkatasubbaih Naidu** (supra), it was contended on behalf of the respondents that an order granting injunction without complying the requisite envisaged under Rule 3 Order XXXIX was void. Their Lordships of the Apex Court extracted the same and in their view held that such an order could be deemed to contain such requirements at least by implication even if they are not stated in so many words. This judgment in that respect does not lay down a proposition that Order XXXIX Rule 3 of C.P.C. is not mandatory. Quite on the contrary it is borne out from the said judgment at paragraph 5 that the Assistant Judge of the City Civil Court, Chennai had in fact examined the case to some extent on the aspect of prima facie case, balance of convenience and in those circumstances had granted an ad-interim injunction ex-parte. It is therefore to be seen whether the same would apply in the facts at large and which would be apparent only on a scrutiny of the order as passed by the learned trial Judge.

24. The respondent no.1 had maintained the suit for the reliefs of declaration and permanent injunction against the appellants and the respondent nos.2,3 and 4 alleging that the contents of the Memorandum of Family Settlement dated 24/01/2014 and the Deed of Reconstitution were beyond her knowledge. It was her case that she had signed the documents

under duress although she relied upon the recorded conversation to support her contention in that regard. It was also her case that she had terminated the Deed of Family Settlement by a legal notice despite which the appellant nos.1 and 3 had gone ahead and surreptitiously created third party right in the family properties and executed a Gift Deed in favour of the respondent nos.6 and 7.

25. The respondent no.1 had otherwise attributed malafide to these parties and the respondent nos.3 and 4 and without getting into further details had sought for the relief of injunction and prayed for an ad-interim relief which was granted in her favour. Without detaining myself on the matter of the family arrangement of 1994 and the Memorandum of Understanding of October,2014 settling their respective rights and liabilities which would be an issue to be dealt with by the trial Court on merits; the question which would remain at large and relevant in this appeal is whether the learned trial Judge had in fact applied its mind to the case before it in terms of the predicates of Order XXXIX Rule 3 C.P.C. before securing the respondent no.1 with the relief of injunction. Order XXXIX Rule 3 C.P.C. reads thus :

3. Before granting injunction, Court to direct notice to opposite party.- The Court shall in all cases, except where it appears that the object of granting the injunction would be

defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

[Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the Order granting the injunction has been made, a copy of the application for injunction together with—

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.]

Therefore a bare reading of Rule 3 Order XXXIX of C.P.C. would make it abundantly clear that the Court shall in all cases direct a notice of the application to be given to the opposite party except whether it appears to it that the object of granting the injunction would be defeated by delay. The judgment of the Court does not end at that and it is apparent from the proviso

circumscribed the Rule that where the Court proposes to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay and require the plaintiff to comply with certain contents. It is therefore to be seen in the parameters of Order XXXIX Rule 3 of C.P.C. whether the impugned order meets the said criteria.

26. The learned trial Judge had recorded the order which reads thus :

ORDER

“Perused the plaint, application for Temporary Injunction, the documents, and the affidavit of the plaintiff supporting her pleadings of plaint application for T.I.

Heard arguments advanced by Ld. Adv. D. Lawande on behalf of the plaintiff. It is submitted that the defendants, taking advantage of the memorandum dt.24.10.2014, are likely to dispose the properties, i.e. the subject matter of the suit. That the plaintiff has right title and interest in the suit properties as she being a co-owner and that the properties are ancestral properties.

Any act on behalf of the defendant to transfer, alienate, mortgage or create any third party interest would likely to prejudice the plaintiff right to suit property.

I have duly considered the pleading of the plaint Temporary Injunction application, affidavit by the plaintiff, so also documents on record.

The material on record disclosed a prima-facie case in favour of the plaintiff that in order to protect the subject matter of the suit I pass the following Order;

“Issue Show cause notice to the Defendant r/o 19/07/2016 at 2.30 p.m., Defendants are directed to maintain status-quo in respect of prayer A & D of Temporary Injunction till next date of hearing.”

27. A cursory perusal of the order under challenge would reveal that the learned trial Court even on a prima facie consideration had not applied its mind to the case of the plaintiff and had made a cursory record that it had perused the plaint, application for temporary injunction, the documents under affidavit supporting the pleadings and recorded the arguments made by the learned Advocate then appearing for the plaintiff. The learned trial Court had made an omnibus observation that it had duly considered the pleadings, affidavits and the documents and without any further discussion had hastily concluded that the material on record disclosed a prima facie case in favour of the plaintiff and in order to protect the subject matter of the suit, she was inclined to pass the order without in any manner considering the predicates of Order XXXIX Rules 1 and 2 C.P.C., that the plaintiff had carved out a prima facie case, that the facts and circumstances of the case at large before her warranted an inference the the balance of convenience was tilted in favour of the plaintiff and that the

plaintiff would suffer irreparable loss and injury in case she was not secured with the relief of injunction, ex-parte.

28. The learned trial Court was brazen to make a record that she had considered the pleadings and documents and the material disclosed a prima facie case without any reference thereto and without considering the aspect of equities and the extent of irreparable loss and injury suffered by the plaintiff granted the ad-interim relief of injunction ex-parte. This order passed by the learned trial Judge was completely in breach of the mandate of Order XXXIX Rule 3 of C.P.C. which required the Court as a matter of Rule to issue notice and whether it deemed fit that the object of granting the injunction would be defeated by the delay and to accord reasons for its opinion that the object of granting the injunction would be defeated by delay. None of these requirements have been adhered to by the learned Trial Court which had mechanically granted the relief to the plaintiff in complete violence to the requirement of Order XXXIX Rule 3 of C.P.C.

29. That the learned trial Court had not applied its mind while passing the impugned order is also borne out from the fact that she had made an omnibus order of injunction not only against

the present appellants and the respondent nos.3 and 4 but also included the respondent no.2 i.e. the Chartered Accountant who had filed a separate appeal and the respondent nos.6 and 7 who had no truck with the lis between the contesting parties and being the beneficiaries under the Gift Deed executed in their favour by the appellant no.1. There was no reason for the learned trial Court to extend the relief of injunction against the respondent no.2 who was acting purely in his professional capacity and had no right or interest in any of the properties in which she claimed right under the family arrangement of 1994. The manner in which the order has been passed therefore reflects a mechanical passing of the order without a proper application of mind and on that premise too, the impugned order cannot be sustained.

30. There was no justification for the learned trial Court to pass the order as it did which reflects that it has not even considered the pleadings as otherwise it would not have secured the plaintiff with the order of injunction considering her pleadings also that the Memorandum of Understanding was of October,2014 and that she had sought to negate it by her notice in 2015 and the suit was filed much thereafter i.e. in July,2016 to claim the equitable relief of injunction.

31. In the result, there is no basis to sustain the the impugned order which is quashed and set aside. Since the parties have otherwise been directed to appear before the trial Court on 19/07/2016 at 14.30 hours, they shall so appear before the trial Court on the scheduled date and time. The trial Court is directed to consider the application in accordance with law. The appeals stand disposed off accordingly. The trial Court shall however not be influenced by the observations made by this Court while dealing with the appeals and passing the order.

NUTAN D. SARDESSAI, J.

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