

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (ST.) NO. 19783 OF 2016
WITH
CIVIL APPLICATION (ST.) NO. 19785 OF 2016
IN APPEAL FROM ORDER (ST.) NO. 19783 OF 2016**

Mr. Yogesh Nathalal Shah	...	Appellant. (Orig. Plaintiff)
V/s.		
Mr. Atul Nathalal Shah & others	...	Respondents. (Orig. Defendants)

.....

Mr. J. G. Damani for the Appellant-Original Plaintiff.

Mr. Sanjay Jain i/b. Mr. Chandrashekar B. Khambekar for Respondent No.1.

Mr. N. V. Walawalkar, Senior Advocate i/b. Mr. Omkar M. Kulkarni for Respondent Nos. 4 & 5.

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**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : OCTOBER 17, 2016.**

P.C.:

1. Heard learned counsel for the parties.
2. **Admit.**
3. This appeal is preferred by the original plaintiff against the order dated 23.06.2016 passed by the City Civil Court, Dindoshi, Mumbai, in Short Cause Suit No.1388 of 2016, thereby rejecting the ad-interim relief as claimed by the appellant-original plaintiff.
4. Brief facts giving rise to the present appeal are as under:

5. The appellant has claimed a right in respect of 1/4th undivided share in the property bearing CTS No.2758A admeasuring 3034.05 sq. mtrs. situated at village Dahisar, Taluka Borivali, Mumbai Suburban District (said property), on the ground that the said property was belonging to his father Late Nathalal Dharamshi Shah as 'karta' of the Hindu undivided family(HUF). It was contended by him that respondent no.1 is his brother, respondent no.2 is his mother and respondent no.3 is his sister. The appellant constituted a Hindu undivided family of late Nathalal Shah alongwith these respondent nos. 1 to 3. It is his contention that Nathalal Shah, his father, had purchased this property alongwith one Pyarali Mohammedali Khoja by registered deed of conveyance dated 18.10.1973 and the said property was shown in ULC order dated 03.12.2003 as the property belonging to HUF of Nathalal Shah. Therefore, the appellant is having 1/4th undivided share in the said property on the death of his father.

6. However, recently, he came to know that respondent no.1 is claiming ownership and right over the said property on the basis of alleged gift deed dated 22.11.2011 executed by Nathalal shah. The appellant came to know about the same when the construction activity was noticed by him over the said property. The said construction activity was undertaken by the partnership firm of respondent no.4, of

which respondent no.1 and his wife are the partners, alongwith respondent no.6-Keval Ashwin Gudka.

7. The grievance of the appellant is that his father cannot gift the said property, which belonged to the HUF, to respondent no.1 alone, and therefore, respondent no.1 alone cannot have the exclusive rights of ownership and share over the said property so as to enable him to transfer the same to the partnership firm. It is further contented that the alleged gift deed therefore cannot be a genuine document. Learned counsel for the appellant has tried to point out that in the income tax returns of deceased Nathalal Shah, produced by respondent no.1, the income from said property was shown even after the alleged execution of the gift deed, which reveals that the gift deed was not at all acted upon even after the death of Nathalal Shah.

8. The sum and substance of the contentions of the appellant is that the alleged gift deed of the said property cannot be having any legal effect so as to deprive him of his undivided share in the said property. According to learned counsel for the appellant, if during pendency of the suit respondent no.4 partnership firm succeeds in making the construction over the property and further creating third party interests therein, the appellant will suffer irreparable loss and hardship and therefore, the appellant has sought relief of injunction restraining the

respondents from carrying out further construction or creating any third party interest in the said property.

9. This notice of motion came to be resisted by respondent no.1 denying that the suit property belongs to HUF. It was specifically contended that the said property was the self-acquired property of deceased Nathalal Shah, which he has purchased alongwith other co-owner Pyarali. It was stated that his father Nathalal has gifted the said property by a registered gift deed in favour of respondent No.1 and in turn, respondent no.1 conveyed the said property to the partnership firm of respondent no.4. It is submitted that his father Nathalal has gifted some other property to the appellant also by virtue of the gift deed dated 12.01.2012. Thus, according to respondent nos.1 to 4, respondent no.1 alone is the exclusive owner of the said property on the basis of the gift deed executed by his father, and as already he has created third party interest in the said property by conveying the same to the partnership firm and the partnership firm in turn, has carried out construction and further created third party interests by executing agreements to sale with prospective purchasers of the flats, proposed to be constructed on the said property, the appellant has absolutely no case to get relief of interim injunction, especially when his application to that effect is also delayed. Hence, if, at this stage, the relief of interim

injunction is granted, the respondents will suffer irreparable loss and hardship.

10. On behalf of respondent nos. 4, 5 and 6, it was contended that as already third party interests are created in the said property and substantial investment is also made by the respondents for development and construction over the said property, the balance of convenience and irreparable loss and hardship lie in their favour, and therefore, no relief of interim injunction as sought by the appellant should be granted.

11. On this notice of motion, the trial Court heard learned counsel for the parties and, as can be seen from the contents of the order of the trial Court, as learned counsel for the appellant insisted for ad-interim relief, the trial Court restrained its order only to the extent of ad-interim relief, and accordingly, after exhaustive hearing of the parties, was pleased to reject the ad-interim relief vide the impugned order.

12. While challenging the impugned order of the trial Court, the submission of learned counsel for the appellant is that when both the parties were heard exhaustively on the notice of motion, the trial Court has committed an error while deciding the prayer relating to ad-interim relief only instead of deciding the notice of motion itself finally. However, as rightly pointed out by learned counsel for the respondents,

the order passed by the trial Court, as stated above, clearly reveals that it was at the instance of learned counsel for the appellant that the trial Court has heard the matter, relating the ad-interim relief only. At various places like paragraph nos.2, 14 and 17 in the impugned order, the trial Court has again and again recorded that it was hearing the matter, only for the purpose of deciding ad-interim relief, considering the insistence made by learned counsel for the appellant for the said relief. In view thereof, no fault can be found with the impugned order of the trial Court. It may be true that the trial Court has heard the matter exhaustively, but then the insistence was only for deciding the ad-interim relief. Hence, it cannot be said that the trial Court has committed any illegality in confining its order to the extent of ad-interim relief only.

13. Now, if one considers that the trial Court was deciding the matter only for the purpose of ad-interim relief, which is refused, and hence, now the appeal is preferred, then the scope becomes limited. The trial Court and this Court has only to consider whether the appellant is having any *prima facie* case in his favour and in whose favour the balance of convenience lies and who will suffer irreparable loss and hardship if ad-interim relief is not granted.

14. On the aspect of *prima facie* case, the documents produced on record clearly go to show that it is a common ground between the parties that the suit property was self-acquired property of deceased Nathalal Shah. It was purchased by him by registered sale deed alongwith one Pyarali Mohammedali Khoja on 18.10.1973. Except for the ULC order dated 3.12.2003, in which the said property is claimed to be belonging to HUF, there is no other document showing that it was considered to be a joint family property or it was inherited as an ancestral property. Even the 7/12 extract of the suit property, which is produced at page no.142, reveals that the name of Nathalal Shal alone is appearing therein in the ownership column and not the name of Nathalal Shal as 'karta' of the HUF.

15. Apart from that, there is a registered gift deed executed by deceased Nathalal Shah in favour of respondent no.1 on 22.11.2011 gifting the entire property to respondent no.1. As rightly observed by the trial Court, one cannot ignore the registered documents at this *prima facie* stage and it is to be given due weightage. It is pertinent to note that after execution of the said gift deed, respondent no.1 has become, on the basis of the said gift deed, the owner of the said property and he has in turn, conveyed the said property to the partnership firm. Now, the partnership firm is in possession of the said property. The partnership

firm has also obtained the necessary and requisite permission including IOD for carrying out construction over the said property in the year 2014 itself. Prior to that, a public notice was issued on 03.04.2014. The list of the flat purchasers is also enclosed alongwith documents to show that third party interests are already created. In the plaint, it is categorically stated that in the year 2015, the appellant came to know that respondent no.1 has started excavation and construction over the said land. Despite that, the suit is filed in the month of May 2016. Therefore, the trial Court has rightly considered that there is delay on the part of the appellant in approaching the Court.

16. Now, as regards the contentions that the gift deed is not legal, valid or that it is a bogus document, all these contentions cannot be decided at this *prima facie* stage when the ad-interim relief is sought, and therefore, the trial Court has rightly held that these contentions will be considered when the matter comes for trial, but, when at this *prima facie* stage the registered gift deed clearly goes to show that deceased Nathalal Shah has, during his lifetime, gifted the suit property to respondent no.1 and respondent no.1 has, in his turn, created third party interest in the said property in favour of respondent No. 4, and respondent no.4 has thereafter again created third party interests in the said property even before the suit was filed, and when the construction

on the said property is in progress, at this stage, if the relief of interim injunction as claimed by appellant is granted, it will be the respondents and the prospective purchasers who will suffer irreparable loss and hardship as against the appellant. Assuming that ultimately, if the appellant succeeds in establishing his case, he will be entitled to get whatever his share in the said property. Therefore, it cannot be said that balance of conveyance will lie in his favour or that he will suffer irreparable loss.

17. In my considered opinion, therefore, the trial Court has properly applied its mind to all these aspects. There are clear findings given by the trial Court with its due reasoning as to why the trial Court thought it fit to refuse ad-interim relief of injunction, and once the findings given by the trial Court are found to be just, reasonable and correct, this Court cannot interfere in the discretion exercised by the trial Court within the limited scope of jurisdiction in the appeal preferred against the rejection of equitable relief of ad-interim injunction. To sum up, therefore, no case is made out by the appellant to interfere in the discretion as exercised by the trial Court.

18. The appeal, therefore, holds no merit and the same is hereby dismissed.

19. It is clarified that all the observations made herein above are only for the purpose of deciding this appeal and the trial Court should not be influenced in any way by these observations.

20. In view of dismissal of the appeal, Civil Application (St.) No.19785 of 2016 also stands disposed of.

(DR. SHALINI PHANSALKAR-JOSHI, J.)