THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL Nos.364, 365, 430 & 468 of 2016

COMMON JUDGMENT:

The respondents-defendants 5 and 9 respectively filed CMA Nos. 364 and 365 of 2016; the respondents-defendants 3 and 4 together filed CMA No. 430 of 2016; and, respondents-defendants 2, 6, 7 and 10 together filed CMA No. 468 of 2016. All these appeals are thus filed by the unsuccessful defendants/respondents (hereinafter 'defendants') assailing the order and decretal order dated 18.04.2016 of the learned Chief Judge, City Civil Court, Hyderabad, passed in IA.No.2576 of 2015 in OS.No.496 of 2015 filed by the plaintiffs/petitioners (hereinafter 'plaintiffs').

2. I have heard the submissions of Sri S. Niranjan Reddy, learned senior counsel appearing for Sri Tarun G. Reddy, learned counsel for the appellants in CMA.no.468 of 2016, Sri J. Venkateswara Reddy, learned counsel for the appellants in CMA.no.365 of 2016, Sri J. Prabhakar, learned counsel for the appellants in CMA.no.364 of 2016, Sri D. Prakash Reddy, learned senior counsel appearing for Sri M. Solomon Raj, learned counsel for the appellants in CMA.No.430 of 2016 and of Sri Vedula Venkata Ramana, learned senior counsel appearing for Sri B. Chandrasen Reddy, learned counsel for the respondents-plaintiffs in all the appeals. I have perused the material record.

3. At the outset, it is to be noted that the plaintiffs brought the suit for perpetual injunction in respect of the plaint schedule property. In the said suit the plaintiffs filed the subject interlocutory application

for granting a temporary injunction to (i) restrain the respondents-defendants and their henchmen from interfering with the plaintiffs' peaceful possession and enjoyment of the plaint schedule property; and, (ii) restrain the respondents-defendants and their staff, students of the educational institutions belonging to the respondents from parking any vehicles in the plaint schedule property. The 3rd defendant filed a counter affidavit. The other defendants 1, 2 and 5 together by a memo; the defendants 4 and 10 by another memo; and defendants 7 and 8 together by a separate memo; and, the defendant no.9 by a memo, adopted the counter affidavit filed by the 3rd defendant.

4. At the hearing before the trial Court, no oral evidence was adduced on either side. However, exhibits P1 to P97 and R1 to R32 were marked.

5. On merits and by the order impugned in these batch of appeals, the trial Court allowed the petition of the plaintiffs with costs and restrained the respondents-defendants and their henchmen by a temporary injunction from interfering with the peaceful possession and enjoyment of the suit schedule property by the petitioners-plaintiffs and further restrained the respondents, staff, students of the Sultan-Ul-Uloom Education Society, from parking any vehicles in the plaint schedule property pending disposal of the suit. Aggrieved thereof, these appeals are filed by the defendants.

6. Before proceeding further, it is apt to note that the pleadings of the parties are lengthy and voluminous. Indeed, the counter-affidavit of the 3rd defendant runs into about 100 pages or even more. Since these appeals arise out of an order and decretal order

passed in an interlocutory application for temporary injunction, this Court is of the considered view that reference to relevant pleadings shorn of un-necessary details, would suffice and there is no need to reproduce verbatim the lengthy pleadings. Therefore, this Court, while disposing of these appeals, deems it appropriate to refer only to the relevant and necessary pleadings of the parties.

7. In the first place, the case of the plaintiffs as stated in the affidavit of S. V. Nagaraja Reddy filed in support of the petition, in brief, is this:

The plaintiffs are private limited companies (15 in number). The plaintiff companies are represented by one authorised signatory, S.V. Nagaraja Reddy (as per the cause title in the plaint). The 1st plaintiff is the owner and possessor of 577.50 square yards and 577.50 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 17.09.1994 and 17.09.1994 bearing document nos.4171 of 1994 and 2364 of 2009; 2nd plaintiff is the owner and possessor of 571.90 square yards having purchased the same for valuable consideration under a registered sale deed dated 17.09.1994 bearing document no.4144 of 1994; 3rd plaintiff is the owner and possessor of 595.83 and 595.83 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 19.09.1994 and 19.09.1994 bearing document nos.4150 of 1994 and 4154 of 1994; 4th plaintiff is the absolute owner and possessor of 577.77 and 577.77 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 19.09.1994 and 17.09.1994 bearing document nos.4175 and 4173 of 1994; 5th plaintiff is the owner and possessor of 586.48 square yards having purchased the same for valuable consideration under a registered sale deed dated 17.09.1994 bearing document no.4145 of 1994; 6th plaintiff is the owner and possessor of 595.83 square yards and 595.83 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 19.09.1994 and 17.09.1994 bearing document nos.4152 and 4147 of 1994; 7th plaintiff is the owner and possessor of 595.83 and 595.83 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 17.09.1994 and 19.09.1994 bearing document nos.4174 and 4238 of 1994; 8th plaintiff is the absolute owner and possessor of 577.50 and 577.50 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 17.09.1994 and 19.09.1994 bearing document nos.4172 and 4176 of 1994; 9th plaintiff is the absolute owner and possessor of 595.83 and 595.83 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 17.09.1994 and 19.09.1994 bearing document nos.4149 and 4153 of 1994; 10th plaintiff is the absolute owner and possessor of 595.83 and 595.83 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 17.09.1994 and 19.09.1994 bearing document nos.4148 and 4155 of 1994; 11th plaintiff is the absolute owner and possessor of 519.06 and 490.75 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 17.09.1994 and 19.09.1994 bearing document nos.4146 and 4151 of 1994; 12th plaintiff is the absolute owner and possessor of 595.83 and 577.50 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 19.09.1994 and

17.09.1994 bearing document nos.2363 and 2358 of 2009; 13th plaintiff is the absolute owner and possessor of 595.83 and 595.83 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 17.09.1994 and 19.09.1994 bearing document nos.2359 and 2365 of 2009; 14th plaintiff is the absolute owner and possessor of 595.83 and 595.83 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 17.09.1994 and 19.09.1994 bearing document nos.2361 and 2366 of 2009; 15th plaintiff is the absolute owner and possessor of 595.83 and 595.83 square yards having respectively purchased the same for valuable consideration under registered sale deeds dated 17.09.1994 and 19.09.1994 bearing document nos.2360 and 2362 of 2009; all the above documents are duly registered in the Office of the Sub-Registrar, Banjara Hills. The above said properties purchased by the respective plaintiffs and the properties purchased by 5 others constitute a single block admeasuring Ac.06.00 guntas. The said single block forms part of Survey no.359, Shaikpet village, with MCH Nos.8-2-249 to 269 and is situate at road no.3, Banjara Hills, Hyderabad. The said Ac.6.00 guntas is the subject suit property and it is more fully described in the schedule annexed to the plaint. Since the date of the said purchases, the plaintiffs are in continuous peaceful possession and enjoyment of the respective properties. There is a compound wall around the plaint schedule property. It was constructed by the vendors of predecessors in title. One Shahamat Ali Khan is the vendor of the plaintiffs. He is the son of Prince Mouzzam Jha (hereinafter, 'Prince'). Osman Ali Khan Bahadur, the VII Nizam (hereinafter, 'Nizam') is the father of Prince. The Nizam, for the benefit of Prince constituted a trust, viz., 'Prince

Mouzzam Jha Trust' (hereinafter, 'the Trust') by a Trust Deed dated 08.10.1949. Under the said Trust, Prince has a life interest in the corpus of the trust property and on his death the property shall devolve on the issues of the said Prince, who may be recognised as per the terms of the Trust Deed. The Prince died on 14.9.1987. Shahamat Ali Khan, being the only son and the legal heir of the Prince became entitled to the property. On 01.05.1954 the Trust, out of its own funds, acquired the property bearing Municipal Nos.8-2-249 to 8-2-267 in a total extent of Ac.24.10 guntas situate at road no3, Banjara Hills, Hyderabad, from Rajaram Dev Rao and Pingali Venkatarama Reddy under a registered sale deed bearing document number 702 of 1954 duly registered in the Office of the District Registrar, Hyderabad District. The Trust property in which the plaint schedule property is also a part consists of a building and the adjacent site known as Mount Pleasant situate at road no.3, Banjara Hills. While so, one Fathima Fouzia claiming to be one of the legal heirs of the Prince filed a suit-OS.no.921 of 1979 (renumbered as OS.no.1328 of 1983) against the Trust on the file of the City Civil Court, Hyderabad, for perpetual injunction with regard to Ac.6.00 guntas of land on the Western side of the premises stating that she is in possession of the property under an oral gift made by the Prince. The Trust also filed OS.no.243 of 1982 against the said lady for perpetual injunction on the file of the Court of the learned IV Additional Judge, City Civil Court, Hyderabad. The learned Additional Judge passed a common judgment dated 20.12.1990 holding that the oral gift is not true and valid and dismissed the suit of the said lady. Her appeal in AS.no.16 of 1994 was also dismissed on 11.12.1997. During 1994-95 Shahamat Ali Khan, and his GPA holder, S.V. Nagaraja Reddy, sold Ac.6.00 guntas of land and registered the same in favour of the purchasers and put the purchasers in peaceful possession of the said extent of land. While so, the said lady filed OS.no.2892 of 1998 (renumbered as OS.No.181 of 2003) on 30.06.1998 for Ac.6.00 guntas of land claiming that the said extent of land was gifted to her by her father and obtained a temporary injunction. She made an attempt to interfere with the possession of the said land and it resulted in initiation of proceedings under Section 145 of the Criminal Procedure Code, 1973 ('the CrPC'). The Special Executive Magistrate passed an order on 08.07.1998 and attached the property. The MRO, Shaikpet, took over the property into his custody *vide* panchanama dated 10.07.1998. She also filed a suit-OS.no.154 of 2003 (old 3162 of 1998) against the Trust on the file of the Chief Judge's Court, City Civil Court, Hyderabad, claiming to be one of the legal heir of the Prince. The said Court passed a common judgment dated 21.07.2003 in both the suits holding that Shahamat Ali Khan is the only legal heir so far as the Trust is concerned and that the lady, Fathima Fouzia, is not the legal heir and dismissed her suits. The learned Chief Judge in the said judgment directed the Special Executive Magistrate, Hyderabad, to handover the schedule property to the GPA holder of the plaintiffs herein. As per the said direction, the Special Executive Magistrate directed the MRO to deliver possession of the property to the GPA holder of the plaintiffs *vide* Rc.No.B/570/98 dated 18.08.2003. In compliance of the same, the property was delivered to the GPA holder of the plaintiffs on 20.08.2003. No appeal was preferred by Fathima Fouzia. The defendants filed a writ petition before this Court in WP.no.17739 of 2003 as 3rd parties to the said suits praying to quash the proceedings dated 18.08.2003 in B/570/98 of the Special Executive Magistrate directing the MRO to raise the attachment of the property in terms of the decree and judgment dated 21.07.2003 of the learned Chief Judge in CCCA.Nos.154 and 181 of 2003. The defendants also pleaded that they were in possession of the disputed property under an alleged agreement of sale. This Court granted interim stay on 17.09.2003/22.08.2003 in WPMP.no.2870 of 2003. Later Shahamat Ali Khan had filed writ appeal in WA.no.1687 of 2003 challenging the interim stay. The Division Bench of this Court passed a common judgment in Writ Appeal and the Writ Petition upholding the orders of the learned Chief Judge and made some observations against the defendants that they have not come to Court with clean hands etcetera. It is also held by this Court in the common judgment that the defendants were never in possession of Ac.6.00 guntas of vacant land, that is, the plaint schedule property herein. Subsequently, the defendants knocked the doors of the Supreme Court and filed SLP (Crl.Nos.1875 and 1876) and the same were also dismissed by the Supreme Court. Therefore, the observations of the High Court became final. While so, the defendants filed a suit against Shahamat Ali Khan and the Trust in OS.no.297 of 2004 on the file of the Court of the learned III Additional Chief Judge, City Civil Court, Hyderabad, for specific performance claiming that the defendants are the lessees of the Trust and subsequently the Trust has orally offered to sell the property and prayed to pass the decree in favour of the defendants and direct Shahamat Ali Khan and the Trust to execute and register a sale deed in favour of the defendants' Society in respect of the property bearing Municipal Nos.8-2-249 to 8-2-267 measuring an extent of Ac.24.10 guntas situate at Road no.3, Banjara Hills, Hyderabad. In the said suit, Shahamat Ali Khan, and the Trust filed IA.no.2104 of 2005 under Order

VII Rule 11 of the Code and sought rejection of the plaint for want of cause of action and on the ground of bar of limitation. The learned Additional Chief Judge allowed the said application and consequently rejected the plaint of the defendants. The learned Additional Chief Judge observed that by the date of filing of the suit there was no concluded contract between the defendants on one hand and Shahamat Ali Khan and the Trust on the other and that the Trust stood extinguished on the date of the death of the Prince on 14.09.1987. The Additional Chief Judge also observed that there is no specific reference to any particular date as to when the exact negotiations concluded and when the contract came into existence and that the trustees of the Trust have no competence to sell the property. It was further stated that the correspondence and the alleged negotiations from the defendants side are only in respect of Ac.14.00 guntas of land and building and the same did not include the total extent of Ac.24.10 guntas and that there is a contradiction between the claim made by the defendants and the correspondence and that there is a discrepancy in the extent of land claimed by the defendants' Society in its plaint and the extent of land purported by the letter dated 19.04.1988. The Additional Chief Judge also stated that there is no evidence that the defendants' society is in possession of the entire extent of Ac.24.10 guntas. Thereafter, the defendants preferred an appeal in CCCA.no.196 of 2006 before this Court against the order rejecting the plaint. The said appeal was also dismissed by the judgment dated 20.04.2009. Therefore, the defendants preferred an appeal before the Supreme Court *vide* Civil Appeal No.2445 of 2014 arising out of SLP (c) No.27953 of 2009. In the meantime, Shahamat Ali Khan made a submission to the Supreme Court that he does not claim any right over the land in question. However, the said submission was opposed by the GPA holder of Shahamat Ali Khan, as an intervener. Further, Shahamat Ali Khan stated before the Supreme Court that he intends to withdraw the petition for rejection of plaint filed by him in the trial Court and the Trust also expressed that they have no objection for the same. In that view of the matter, the Supreme Court allowed the submission made by Shahamat Ali Khan and passed an order that the order dated 20.04.2009 passed by the Division Bench of this Court and the decree of the City Civil Court in IA.No.2104 of 2005 in OS.no.297 of 2004 are set aside. The Supreme Court held that it will be open to the parties to the suit to raise all contentions as available and that the appropriate Court will decide the same without being influenced by the order passed by the Supreme Court and that it will be open for the purchaser and intervener to file appropriate application for impleadment before the trial Court and the trial Court is directed to proceed with the suit expeditiously. The defendants filed a memo on 24.05.2014 before the Additional Chief Jude's Court, City Civil Court, Hyderabad, seeking permission to withdraw their suit for specific performance and the said Court, upon satisfying with the reasons, permitted to withdraw the suit and in view of the same the suit was dismissed. Thus, the title of the plaintiffs is clearly established at all stages of the litigations and the defendants were defeated in all their attempts. Hence, the defendants developed a sore eye on the plaint schedule property and intended to deprive the plaintiffs of the said property and to gain it by hook or crook. The plaint schedule property was surrounded by 70 years old compound wall with cracks and patches. A part of the wall is under dilapidated condition. Due to the recent heavy rainfall in the region, part of the compound wall on the Western side collapsed to some extent. Therefore, free ingress and egress, in and out of the plaint schedule property became quite possible. Taking this as an advantage, the defendants, whose educational society is very adjacent admeasuring Ac.18.10 guntas surrounded by a compound wall are accessing into the plaint schedule property and parking their vehicles, which is an open premises. The defendants are running various educational institutions viz., Junior College, Degree College, Engineering College etcetera adjacent to the suit property over an extent of Ac.18.10 guntas. There is a sporadic incessant trespass by the staff, students, visitors etcetera of the defendants' educational institutions who are parking their vehicles in part of the plaint schedule property on Western side during the week days between 09:30 AM and 04:00 PM. The plaintiffs through one Balaji and their security guards came to notice the current scenario on 12.06.2015 and restrained the staff, students, visitors etcetera of the defendants educational institutions from parking vehicles in the plaint schedule property. Thereafter, the plaintiffs through the GPA holder gave a complaint to the Station House Officer, Banjara Hills, on 13.06.2015 to provide necessary protection for the plaint schedule property as per orders dated 21.07.2003 in OS.nos.154 and 181 of 2003 passed by the learned Chief Judge, City Civil Court, Hyderabad. No action has been taken so far by the police. The plaintiffs, their staff and security guards are having tough time in restraining the vehicles of the defendants' educational institutions from being parked in the plaint schedule property. On 29.06.2015, at about 11:30 AM, the defendants along with their henchmen tried to interfere with the possession of the plaintiffs over the plaint schedule property by attempting to park the vehicles on the Western side of the plaint schedule property. The plaintiffs, their staff and security guards restrained them from doing so. Thereafter, the defendants and their henchmen threatened the plaintiffs, their staff and security guards by stating that they will park their vehicles in the plaint schedule property between 09:30 AM and 04:00 PM every working day and that they will see that the plaintiffs wont get police protection and that they will deploy more security guards to thwart the actions of the plaintiffs, their staff and security guards and will park their vehicles on the Western side of the plaint schedule property. The defendants through their henchmen tried to contact the plaintiffs to give an extent of half acre of the suit schedule property on the Western side, on lease, for parking their vehicles. The plaintiffs rejected their offer. Hence, on 01.07.2015 at about 09:30 A.M., the defendants started interfering with the plaintiffs' plaint schedule property by making attempts to park their vehicles. The said attempt was restrained by the plaintiffs, their staff and security guards. Thus, there is continuous interference with the possession of the plaintiffs over the plaint schedule property by the defendants and the defendants are threatening the plaintiffs in order to permit parking vehicles of the defendants, staff, students, visitors, etcetera of educational institutions of the defendants on day to day basis. The plaintiffs have got *prima* facie case, balance of convenience is in their favour and if injunction as sought for is not granted they would suffer serious and irreparable loss.

8. The crux of the defence of the defendants, which is relevant, in brief, is this: -'The plaintiffs filed the suit with false allegations by suppression and misrepresentation of facts. The plaintiffs

did not come to Court with clean hands. The plaintiffs have neither title to nor possession over the plaint schedule land. The plaintiffs' vendor, Shahamat Ali Khan, has no valid right, title and interest to convey the plaint schedule property to the plaintiffs. The suit for injunction simpliciter is not maintainable. The plaintiffs' vendor was not in possession of the plaint schedule property at the time of the execution of the alleged sale deeds of the plaintiffs and 5 others. The recitals in the sale deeds of the plaintiffs and 5 others are false. The five others are not admittedly parties to the suit and the particulars of the properties purchased by the five others are not mentioned in the plaint. The documents being relied upon by the plaintiffs are sham and nominal and never intended to pass on title and were never acted upon. Surprisingly the boundaries in all the documents of the plaintiffs are virtually one and the same and the properties as mentioned in the documents are non existent on the site and the properties covered by the documents of the plaintiffs cannot be contiguous as alleged in the plaint. Sultan-Ul-Uloom Society (hereinafter 'the Society'), which is running various institutions as set out even in the plaint was in possession of the entire property comprising of Ac.24.10 guntas from 1st November,1980 initially as a tenant and thereafter as agreement holder. There is a compound wall enclosing the entire Mount Pleasant property of Ac.24.10 guntas which is now approximately Ac.22.16 guntas after acquisition of portions of property by the GHMC in the years 1990 and 2005. It is false to state that there is a compound wall enclosing Ac.6.00 guntas of land. The area was always used as the parking area for Cars, Buses etcetera of the Society and the entire Ac.22.16 guntas including the subject Ac.6.00 guntas belongs to the Society and the Society is in possession of the same. The

Society is running several educational institutions in which several thousands of students are studying. Granting of injunction disrupts the academic schedule and the working of the institutions and causes irreparable injury to the institution and its students at large. When the Society is in possession and when the plaintiffs are not in possession, the question of alleged interference with their possession does not arise. In the Ac.6.00 guntas of land comprised in Ac.22.16 guntas, there is an open Well, which caters to the needs of the various institutions being run by the Society and also its staff and students, gardening and upkeep of the premises. A separate motor with electricity connection bearing Ser.No.A2007604, USC 100387304 is in operation. The electricity charges are being paid by the Society for the last more than three decades and the watchman-security personnel are using the premises and are residing therein. The Society is also paying property tax to the GHMC as well as Nala tax. The alleged panchanama of the MRO is a paper transaction and the possession of the property always continued with the Society. The Society is a necessary party to the suit. The plaintiffs are not interested but there are certain elements interested in grabbing the land of the Society and the Trust. The plaintiffs have not filed title deeds of all the plaintiffs and five other purchasers, if any, in respect of the entire 6 acres of plaint schedule property. The Trust exercised legal ownership over the plaint schedule property and the trustees exercised the right to sell the property for the interests of the original beneficiary. The plaint schedule property could not have been sold in the year 1994 in view of the proceedings pending under the Urban Land Ceilings and Regulation Act, 1976. Neither the Society nor the Trust was impleaded as party defendant to the suit and as respondent to the injunction application.

The suit and application are liable for dismissal for non joinder of the necessary parties.'

9. I have carefully gone through the counter affidavit of the 3rd defendant and the reply filed on behalf of the plaintiffs.

10. I have gone through the pleadings of the parties, in detail. The learned senior counsel and counsel appearing for the parties made submissions in line with the respective pleaded cases of the parties. The other contentions of the parties will be referred to in the succeeding paragraphs, if necessary, to avoid repetition.

11. I have perused the written submissions in CMA.no.430 of 2016 filed on behalf of the appellants in all the appeals. I have also gone through the written submissions filed on behalf of the respondents-plaintiffs. I have also gone through the decisions cited by both the sides.

12. Now I shall deal with various relevant aspects of the matter and the contentions and rival contentions in seriatim for answering the following points, which arise for determination:

1. Whether the plaintiffs have made out valid and sufficient grounds and satisfied the cardinal principles for granting temporary injunction as prayed for?

2. Whether the order and decretal order of the trial Court are unsustainable under facts and in law as being contended by the defendants? And, if so, whether the order and decretal order of the trial Court are liable to be set aside?

3. To what relief?

13. POINTS:

To begin with, it is apt to refer to the settled legal position with regard to granting or refusal of temporary injunctions. Ordinarily, the following three main principles govern the grant or refusal of injunction: a) prima facie case; b) balance of convenience; and, c) irreparable injury. (See: Hindustan Petroleum Corporation Ltd., v. Srimannarayan [(2002) 5 SCC 760]). In grant or refusal of injunction, pleadings and documents play vital role. In the broad category of *prima facie* case, it is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must adjudge the existence or otherwise of a *prima facie* case. The Court while granting or refusing to grant injunction should exercise sound judicious discretion to find the amount of substantial mischief or injury which is likely to be caused to the plaintiffs, if the injunction is refused, and compare it with that which is likely to be caused to the other side, if the injunction is granted. Only on weighing competing possibilities or probabilities of likelihood of injury, an injunction would be issued. In addition to the three basic principles, a Court while granting injunction must also take into consideration the conduct of the parties. A person who had kept quiet for a long time and allowed others to deal with the property exclusively would not be entitled to an order of injunction. The Court should not interfere only because the property is a very valuable one. (See: Mandali Ranganna and Ors. v. T. Ramachandra [AIR 2008 SC 2291]). Grant or refusal of injunction would have serious consequences depending upon the nature thereof. In dealing with such matters the Court must make all endeavours to protect the interest of the parties by balancing the conveniences and inconveniences. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands. (See: Seema Arshad Zaheer and Ors. v. Municipal Corporation of Greater Mumbai and Ors. [(2006)5 SCC 282]). Now I shall revert to the facts of the case.

13.1 Firstly: The plaintiffs, which are 15 private limited companies, in support of their request for granting temporary injunction in respect of the plaint schedule property placed reliance upon the sale deeds of the plaintiffs and *inter alia* claimed in the plaint that the plaintiffs and five others are the owners of various portions of the property constituting the single block of plaint schedule property of an extent of Ac.6.00 guntas. The plaintiffs also submit that the recitals in the sale deeds of the plaintiffs support their contention that they are in possession of the respective portions purchased by them from the dates of the said purchases. Thus, the plaintiffs rely upon the title deeds/sale deeds in respect of plaint schedule property to prove their *prima facie* case of possession over the plaint schedule property. Nonetheless, as per settled legal position, this Court has to examine carefully the pleadings of the plaintiffs as well as their documents, which are exhibited. The plaintiffs in their pleadings referred to 28 sale deeds, the details of which are already adverted to while extracting the pleaded case of the plaintiffs. However, only copies of 27 sale deeds are exhibited as exhibits P33 to P59 and the sale deed bearing document no.2360 said to have been obtained by the 15th plaintiff was not exhibited. Nevertheless, when the extents of all the 28 sale deeds as stated in the plaint are added up, the total extent works out (approximately) to

16,334.34 square yards = Ac.3.37 guntas only. Further, the schedule of every copy of the sale deed of the plaintiffs reflects that the property sold under each such document is as per plan annexed. But, the plans annexed to the sale deeds are not filed. This vital omission assumes importance in view of the contention of the defendants that the boundaries in the plaintiffs' documents are virtually one and the same and they do not constitute one single block. No explanation is forthcoming for not filing the plans or copies of the plans annexed to the sale deeds of the plaintiffs. Thus, the exhibits P33 to P59 are incomplete documents and therefore their probative value is very much doubtful, in the facts and circumstances of the case. It is trite to note that in the plaint it is stated that besides the plaintiffs, five others are also the owners of portions of the total extent of the plaint schedule property. The details of the said five others are not pleaded. It is not even stated by the plaintiffs as to whether such five others are individuals or companies. It is pertinent to note that the plaintiffs did not plead in the original pleadings that five others authorised the plaintiffs to file the suit on their behalf also and protect their interests as all of them are having common interest in the suit property. However, in the reply of the plaintiffs it is stated so. No document is filed with the plaint and exhibited to show that the five others either individually or collectively authorised the plaintiffs to sue on their behalf and protect their interests. It remains unexplained as to how on oral instructions and without any written authorisation, the plaintiffs, which are 15 private companies, are entitled to lay the suit on behalf of the five others, whose names and details are not even disclosed in the pleadings of the plaintiffs. The nature of the documents, if any, under which the said five others acquired title to the portions of the plaint schedule property is not even stated in the plaint. The details of the documents, if any, of such five others like the dates of the documents, the extents covered by the documents, the names of the vendors under the documents of the said five others are not pleaded. Even though six more original sale deeds and one certified copy of the sale deed were also marked as exhibits P60 to P66, the said documents, which do not find a reference in the pleadings of the plaintiffs, are of no avail, as the law is well settled that any amount of evidence without any basis in the pleadings cannot be looked into. It is fairly conceded during the course of arguments that even if the extents of the said exhibits are also added up to the extents purchased by the plaintiffs, the total extent covered by all the documents of the plaintiffs and five others would fall well short of the total extent of the plaint schedule property, which is Ac.6.00 guntas. Thus, there are no documents even to support the case of the plaintiffs in respect of the total extent of Ac.6.00 guntas of the plaint schedule property. When this is the factual position, why the plaintiffs claimed in the suit that they and five others are the owners and possessors of Ac.6.00 guntas of land, remains unexplained. Hence, the plaint averments that the plaintiffs and five others purchased the plaint schedule property and are in possession of the entire extent of plaint schedule property are *prima facie* false. Therefore, on the very contentions of the plaintiffs, it follows that the plaintiffs could not *prima facie* establish their lawful possession over the entire extent of the plaint schedule property. The encumbrance certificates exhibited are of no avail to the plaintiffs considering the nature of the said documents and also for the reasons stated supra. All the other documents exhibited in

'P' series relate to previous litigations to which the defendants and the plaintiffs and five others are not parties. However, the Society, which is not a party to the present *lis* is a party to some of the said previous litigations. Be that as it may.

13.2 Secondly: Dealing further with the aspect of *prima facie* case with regard to actual possession, the plaintiffs place reliance upon the proceedings of the MRO dated 18.08.2003 and a delivery panchanama dated 20.08.2003 viz., exhibits P31 and P32. *Per contra* the defendants contend that the said proceedings have no legal sanctity and that the delivery under the panchanama is a paper delivery and that the possession of the Society was continuous right from the inception of the lease in the year 1980 and that the possession of the Society was never disturbed at any time and that neither the vendor of the plaintiffs nor are the plaintiffs ever in possession of the property and that the Society was and is in possession of the entire extent of land including the plaint schedule property since the inception of the lease in favour of the Society. To consider and appreciate the contentions, it is necessary to refer to the relevant aspects covered by the previous litigation. As per material on record, one Fathima Fouzia, who is said to be the step sister of Shahamat Ali Khan, instituted OS.no.2892 of 1998 (renumbered as 181 of 2003) on 30.06.1998 for the subject 6 acres of land, *inter alia*, claiming that the said land was gifted to her by her father and obtained a temporary injunction in that suit and allegedly made attempt to interfere with the possession of the said land. The said acts resulted in initiation of proceedings under Section 145 CrPC. The Special Executive Magistrate passed an order on 08.07.1998 and attached the property and thereafter the MRO, Shaikpet, took over the custody of the property vide panchanama dated 10.07.1998. She also filed another suit-OS.no.154 of 2003 (old 3162/98) in the Court of the Additional Chief Judge, City Civil Court, claiming to be one of the legal heirs of the Prince. By a common judgment rendered in both the suits, on 21.07.2003, the trial Court dismissed both the suits. While dismissing the said suits, the trial Court directed the Special Executive Magistrate to handover the schedule property forthwith, as per procedure, to the 3rd defendant in the said suit, who is the GPA holder of the 2nd defendant. The 2nd defendant in the said suit is Shahamat Ali Khan. His GPA holder is S.V. Nagaraja Reddy, who is no other than the authorised signatory of the present plaintiffs. Thus the property was directed to be delivered by a common judgment dated 21.07.2003 to the power of attorney holder of Shahamat Ali Khan but not the plaintiffs herein. Thereafter, the Deputy MRO, Shaikpet Mandal, conducted a panchanama on 20.08.2003 and delivered possession of the property to S.V. Nagaraja Reddy, the 3rd defendant in the said suit, who is no other than the GPA holder of the 2nd defendant therein, Shahamat Ali Khan. Thus, the property was delivered to Shahamat Ali Khan, who is the vendor of the plaintiffs but not to the plaintiffs herein. This fact is evident from exhibit P32, panchanama. Therefore, the proceedings of the Special Executive Magistrate and the MRO clearly show that the plaintiffs are not in possession and the possession was delivered to Shahamat Ali Khan through his said power of attorney holder. It is not the pleaded case of the plaintiffs that their vendor, Shahmat Ali Khan, was looking after their interest in the previous litigation and he had obtained possession of the property on their behalf and redelivered possession of the same to them. However, in the affidavit and the plaint, the plaintiffs made a false claim that the property was delivered to their GPA holder. To be more precise, at paragraph 9 in the affidavit filed in support of the subject petition, on this particular aspect, it is averred, verbatim, as follows: - '*...Further, the Hon'ble Court directed the Special Executive Magistrate, Hyderabad to handover the schedule property to the GPA holder of the petitioners herein. That as per the said direction, the special executive magistrate directed the Mandal Revenue Officer to deliver the possession of the property to the GPA Holder of the petitioner vide Rc.No.B/570/98 dated 18.08.2003 and in compliance of the said property to the GPA Holder of the petitioners on 20.08.2003...*' As rightly contended on behalf of the defendants, the said pleading of the plaintiffs is a deliberate falsehood. It is not the case of the plaintiffs, which are private limited companies, that Nagaraja Reddy is their GPA holder. It is their specific case that the said Nagaraja Reddy is their authorised signatory. Further, it is not the case of the plaintiffs that by the date of the said delivery proceedings, the said Nagaraja Reddy is their authorised signatory. Therefore, the contention that the delivery of the property was made to the GPA holder of the plaintiffs is a false averment in the plaint is an established fact. The contention of the defendants that the plaintiffs deliberately made such false averments in the plaint obviously to get over the fact that the property was delivered to Shahamat Ali Khan and also the further fact that the delivery proceedings disclose that the plaintiffs are not in possession of the plaint schedule property even as on 20.08.2003, merits consideration. As a sequel, it must be held that the plaintiffs could not establish a *prima facie* case with regard to their possession over the plaint schedule property. Though the learned senior counsel appearing for the plaintiffs would try to explain that the delivery proceedings would show that the property was delivered to the vendor of the plaintiffs and that therefore neither the Society nor the defendants are in possession of the plaint schedule property, the said contention cannot be countenanced for the reason that in the absence of the Society as a party to the suit any findings cannot be recorded contrary to the interests of the Society in the absence of an opportunity of hearing to the Society more particularly in the light of the fact that the Society's stand that its' possession was never disturbed is borne out by some of the documents exhibited and placed on record. Even assuming for a moment that the possession of the Society is disturbed, it will not be helpful to the plaintiffs as the plaintiffs are required to establish a *prima facie* case with regard to their possession, which they could not establish. Further, even if it is to be accepted that Society's possession was disturbed by delivery proceedings, then it is to be accepted that Society was in possession as on the date of delivery but not the plaintiffs. When once the property was delivered to Shahamat Ali Khan, it is for the plaintiffs to plead and establish that the property was re-delivered to the plaintiffs by him or somebody else concerned. There is no pleading to the said effect and on the contrary a false plea contrary to the record that the property was delivered to the GPA holder of the plaintiffs herein was raised by the plaintiffs. It is axiomatic that the plaintiffs succeed if only they establish a *prima facie* case on their own strength; but, they cannot rely upon the weakness of the defence more particularly in the absence of a semblance of *prima facie* case in their favour. It is to be reiterated that the plaintiffs' specific case is that the defendants are impleaded in their individual capacities. In the reply filed by the plaintiffs, it is specifically averred as follows: 'The present suit is filed for injunction against the interference of the respondents in their individual capacities, hence, the question of making Muzzam Jah Trust, Sultan-Ul-Uloom Educational Society etc., does not arise. It is absolutely false that Sultan-Ul-Uloom Educational Society is in continuous, uninterrupted and exclusive possession of the suit property since 1st November, 1980.' Thus, the suit is not even filed against the defendants in their official capacities, that is, as office bearers of the Society. When the plaintiffs want to contend that the Society was and is not in possession of the property and when they base their claim on the said contention also, they ought to have added the Society as a party defendant to the suit. And, if according to them the Society cannot be directly sued in view of the decision of the Supreme Court in Illachi Devi (D) by LRs and others v. Jain Society [AIR 2003 SC 3397], they ought to have sued the defendants in their capacities as office bearers of the Society instead of in their individual capacities. The plaintiffs did not do so. In fact the second part of the prayer of the plaintiffs in the application for temporary injunction is to restrain the respondents-defendants and their staff, students of the educational institutions belonging to the respondents from parking any vehicles in the plaint schedule property. When the defendants were sued in their individual capacities and not as office bearers of the Society and when the plaintiffs are also aware that the Society is running the Educational Institutions and not the defendants and when they wanted the students and the staff of the Educational Institutions to be injuncted, it is for them to explain as to how they are entitled to the relief claimed in the suit filed against the defendants herein. The plaintiffs cannot be heard to say that the students, the staff, the security guards and others concerned with the Educational Institutions of the Society are either the henchmen of the defendants or that they are under the control of the defendants. When the plaintiffs do not want to sue the Society directly or through its office bearers, they cannot be heard to say anything against the interests of the Society in respect of the property over and in respect of which the Society is claiming to be in its possession. By impleading the defendants alone in their individual capacities, the plaintiffs by a round about and ingenious method cannot claim any reliefs against the Society and its office bearers, and also the staff and students etcetera of its Educational Institutions. The learned senior counsel for the plaintiffs contended that as the delivery proceedings show that the property was delivered to Shahamat Ali Khan, the contention of the defendants that the delivery is a paper delivery cannot be countenanced and that the delivery proceedings are unchallengeable and that the same can be undone only by a decree of delivery of possession, which the Society is required to obtain in an appropriate legal proceeding. As already noted any contentions of the plaintiffs with regard to the rights and interest of the Society in the subject property and the pleas based on estoppel and res judicata cannot be permitted to be advanced in this litigation as the said aspects and issues do not fall for consideration and determination in the absence of the Society or its office bearers as parties to this *lis*. Therefore, all the contentions of the plaintiffs touching upon the rights and interest of the Society, if any, over the plaint schedule property and any other further contentions that the Society is not in possession of the subject property since 1st November, 1980 cannot be countenanced by this Court for the aforestated reason. When one of the contentions is that the staff and the students etcetera of the educational institutions being run by the Society are using the property for parking of the vehicles during working hours on working days of the institutions and when the plaintiffs' claim is squarely against the Society and its Educational Institutions, the suit as framed and filed against the defendants in their individual capacities, *prima facie,* does not entail the plaintiffs to a temporary injunction against the defendants who are impleaded in their individual capacities and who in such capacities have nothing to do with the alleged interference by the men of the Society and the parking of the vehicles by the students, staff and others associated with the Educational Institutions being run by the Society. On the above analysis of the pleadings and the contentions of both the sides, this Court finds that the contentions of the defendants that the plaintiffs have no semblance of case against the Society and hence the suit in the present form is cleverly and unfairly filed with the oblique motive of harming the interests of the Society, is having considerable force and merits consideration, *ex-facie*. On the above analysis, this Court finds that the plaintiffs have no *prima facie* case.

13.3 Thirdly: Though the plaintiffs claim that they and five others collectively purchased the plaint schedule property long time back, they did not participate in any of the prior litigations adverted to in the plaint. When possession of the property was taken over by the Special Executive Magistrate under the provisions of Section 145 of the Code of Criminal Procedure, pursuant to the common judgment of the Chief Judge in the two suits filed by Fathima Fouzia to which the plaintiffs and five others are not parties, if really the plaintiffs were in possession by then, they ought to have objected for taking possession of the property or in the alternate they ought to have approached a Court and assailed either the orders of the Chief Judge in the common judgment rendered in the two suits filed by Fathima Fouzia or the delivery proceedings. They did not do so. This fact *prima facie* lays bare that the plaintiffs' claim of possession is far from truth. On the other hand, the Society made efforts to set aside the said findings in the common judgment of the Chief Judge and also the relevant term of the decree made in the suits. The said finding in the common judgment and term in the decree as could be seen from exhibit P7, the certified copies of the decree and common judgment, are as under: 'The Special Executive Magistrate, Hyderabad is directed to handover the scheduled property forthwith to the 3rd defendant who is the General Power of Attorney of 2nd defendant as per procedure.' 'That the Special Executive Magistrate, Hyderabad is directed to handover the scheduled property forthwith to the 3rd defendant who is the General Power of Attorney of 2nd defendant as per procedure.' Ultimately the Society filed CCCA.no.21 of 2004 before this Court assailing aforestated paragraph 15(8) of the judgment and condition no.8 of the decree passed by the learned Chief Judge in OS.no.154 of 2003 and OS.no.181 of 2003. This Court allowed the said appeal and set aside the impugned direction of the learned Chief Judge, City Civil Court, Hyderabad given in paragraph 15(8) of the impugned common judgment and condition 8 of the decree drawn in conformity therewith. This fact is evident from exhibit R1, the copy of the judgment of this Court in the said CCCA. Thereafter, the review petition in Rev.CCCAMP.753 of 2007 filed by Shahamat Ali Khan and S.V. Nagaraja Reddy was dismissed by this Court as is evident from exhibit R2, the copy of the orders passed in the said review petition.

Thus, it is borne out by record filed by the plaintiffs themselves that while the plaintiffs kept quiet in the face of proceedings adverse to their rights and interests, the Society ventilated its grievances before a competent Court and got the adverse finding in the judgment and the consequential term in the decree set aside. The further contention of the plaintiffs that delivery of possession of the property to Shahamat Ali Khan, their vendor, benefits the plaintiffs and supports the case of the plaintiffs with regard to possession of the property is devoid of merit and the said contention is to be stated only to be rejected. As rightly urged by the learned senior counsel for the defendants, the plaintiffs did not plead that their vendor, Shahamat Ali Khan, is pursuing the litigations on their behalf and for their benefit and is taking care of their interests. The contention that the possession taken from the MRO under exhibit P32 by Shahamat Ali Khan inures for the benefit of the plaintiffs is liable for rejection also for the reason that in any proceeding before any Court Shahamat Ali Khan never disclosed in his pleadings before any Court that he is acting for the benefit of his vendees and to protect their interests. It is also not the pleaded case of the plaintiffs that Shahamat Ali Khan is taking care of their interests in respect of the plaint schedule property. On the contrary, in the proceedings before the Supreme Court, Shahamat Ali Khan, the vendor of the plaintiffs, never supported the plaintiffs' cause and in-fact made a categorical statement through his counsel that he does not claim any right over the land in question. Thus, Shahamat Ali Khan, the vendor of the plaintiffs, supported the cause of the Society as is evident from exhibit R7, which is the copy of the order of the Supreme Court in Civil Appeal No.2445 of 2014 dated 18.02.2014. This Court shall advert to this aspect in greater detail at a later part of this common judgment for convenience. All these above said facts borne out by the record singularly point out to the fact that the plaintiffs have no *prima facie* case.

13.4 Fourthly: There is one more aspect to be gone into on the aspect of *prima facie* case with regard to possession. In the plaint or plaint schedule, the plaintiffs did not mention that there is a pump room and a Well in the plaint schedule property, whereas the defendants clearly pleaded that there is a Well and a pump room with electricity service connection in the plaint schedule property and that the Society is paying electricity consumption charges for the same. The relevant pleading of the defendants reads as under: "In the remaining land forming part of the 6 acres claimed by the plaintiffs, there is an open Well which caters to the needs of the various institutions being run by the Society, including its staff and students, gardening and upkeep of the premises. A separate motor with electricity connection bearing Meter No.SER No.A2007604, USC 100387304 is in operation. The electricity charges for operating the said motor are being and have been paid by the Society for the last more than three decades." There is a Well and a pump room in the schedule property is not only undisputed but is also sufficiently established. In fact, as already noted, the plan annexed to exhibit P32, copy of panchanama, makes the said fact abundantly clear. The defendants also filed exhibits R22 to R32 electricity bills cum demand notices and payment receipts in respect of electricity service connection bearing no.085126 for the pump house attached to the Well. The said pleaded and established facts coupled with the exhibits also *ex facie* lay bare that the plaintiffs are not in possession. Had the plaintiffs been in possession of the plaint schedule property they ought to have mentioned in their plaint about the existence of the Well and the pump house with electricity service connection, but, they did not do so. It is not the case of the plaintiffs that they are paying electricity consumption charges. The contention on behalf of the plaintiffs that the electricity bills were in the name of the Engineering College but not in the name of the Society also need not be countenanced as one of the undisputed contentions before this Court is that the Society is running the educational institutions including an Engineering College. Therefore, this particular aspect of the matter, as rightly pointed by the learned senior counsel appearing for various defendants-appellants, clinches the issue of possession against the plaintiffs and reflects marked absence of *prima facie* case for the plaintiffs.

13.5 Fifthly: Coming yet again, in detail, to the contention of the defendants that Shahamat Ali Khan, the vendor of the plaintiffs, is not supporting the cause of the plaintiffs and that he supported the cause of the Society, it is pertinent to refer to the following aspect. The Society filed a suit against Shahamat Ali Khan, the vendor of the plaintiffs, and the Trust in OS.no.297 of 2004 on the file of the Court of the learned III Additional Chief Judge, City Civil Court, Hyderabad, for specific performance claiming that the Society was initially a lessee of the Trust and that subsequently the Trust has orally offered to sell the property and prayed to pass the decree in favour of the Society and to direct Shahamat Ali Khan and the Trust, the defendants therein, to execute and register a sale deed in favour of the Society in respect of the property bearing Municipal Nos.8-2-249 to 8-2-267 measuring an extent of Ac.24.10 guntas situate at Road no.3 Banjara Hills, Hyderabad. In the said suit, Shahamat Ali Khan and the Trust filed IA.no.2104 of 2005 under

Order VII Rule 11 of the Code and sought rejection of the plaint for want of cause of action and on the ground of bar of limitation. The learned Additional Chief Judge allowed the said application and consequently rejected the plaint of the Society. The appeal preferred by the Society was dismissed by this Court. Thereafter the Society filed Civil Appeal No.2445 of 2014 arising out of SLP(c).No.27953 of 2009 before the Supreme Court. In the said proceedings leave was granted. During the pendency of the said civil appeal, Shahamat Ali Khan filed an application before the Supreme Court seeking leave to discharge his advocate on record and authorise another advocate on record to appear on his behalf and sought permission to withdraw his application filed before the trial Court for rejection of the plaint. In the said proceedings before the Supreme Court, learned counsel for Shahamat Ali Khan submitted to the Supreme Court that he does not claim any right over the land in question. However, the said submission was opposed by the counsel for the GPA holder and intervener, S.V. Nagaraja Reddy. In view of the stand taken by Shahamat Ali Khan before the Supreme Court, the petition under Order VII Rule 11 of the Code was permitted to be withdrawn by allowing the prayer for withdrawal of the said petition. Accordingly, the order of this Court and the order of the trial Court rejecting the plaint are set aside by the Supreme Court. Thus, the Supreme Court did not consider the said objection of S.V. Nagaraja Reddy, the GPA holder of Shahamat Ali Khan, and permitted Shahamat Ali Khan to withdraw his application for rejection of the plaint filed in the suit of the Society for specific performance wherein the Society claimed that it is in possession by virtue of a lease at the inception and oral agreement of sale thereafter. In-fact, the then GPA holder of

Shahamat Ali Khan filed applications viz., 8-9/2014 and 10-11/2014 in Civil Appeal Nos.5729-5730 of 2009 to recall/modify the orders dated 15.04.2011 and 29.04.2014 to the extent that the withdrawal of the instant civil appeals would not affect the rights of the 3rd parties created by appellant no.2 therein in 6 acres of the said property in related pending litigations qua the suit property (see: Exhibit R11). However, the Supreme Court dismissed his applications by its order dated 22.01.2015. The said order as is evident from exhibit R12 reads as under: 'We are not inclined to entertain these IAs which are dismissed.' Therefore, the said dismissal order clearly makes it manifest that the attempt of the erstwhile GPA holder of Shahamat Ali Khan-cum-intervener to protect the interests of 3rd party purchasers of 6 acres of land was negatived by the Supreme Court. Thus, as per the material record, particularly, exhibit R7, it appears that Shahamat Ali Khan, the vendor of the plaintiffs stated categorically before the Supreme Court that he does not claim any rights over the land in question and thus conceded the case of the Society.

13.6 Sixthly: Be it noted that in the orders under exhibit R7 the Supreme Court directed the parties to raise all the contentions as are available before the trial Court and the trial Court will decide the suit without being influenced by the order passed by the Supreme Court. It was also observed that it is open for the Trust and the intervener to file appropriate application for impleadment before the trial Court which the trial Court may consider on its own merits. Thereafter, by filing a detailed memo, the Society withdrew the suit for specific performance. Adverting to these set of facts, the learned senior counsel for the plaintiffs contended that since the Society has withdrawn the suit for specific performance, it follows that the Society has no right, title and interest in the subject Ac.6.00 guntas of land. It need not be gain said that any contentions contrary to the interests of the Society cannot be countenanced in the light of the fact that neither the Society nor its office bearers are parties to the present *lis*.

13.7 Seventhly: Dealing next with the aspect of balance of convenience & inconvenience and irreparable injury that would ensue to the plaintiffs if no injunction is granted or the irreparable injury that would be caused to the defendants if the injunction is granted, in the well considered view of this Court, since this Court has already held that the plaintiffs have no *prima facie* case, which is a sine-qua-non, it is not necessary to deal with the above said two aspects. Be that as it may. Though the case of the plaintiffs is that they purchased the properties during the year 1994, the registration numbers of the sale deeds would indicate that some of the sale deeds of the plaintiffs were registered in the year 2009. The sale deeds of the plaintiffs were never produced before any public authority and the property was not mutated in the names of the plaintiffs and five others. The plaintiffs never put forth their case of purchase and possession of the property in any previous litigation in which the subject Ac.6.00 guntas of land was a subject matter. According to them, the property is a vacant site and therefore not capable of actual possession. Placing reliance on the decision of the Supreme Court in Anathula Sudhakar v. P. Buchi Reddy [2008 (6) CTC 237], the learned senior counsel for the plaintiffs contended that on a relative scale the plaintiffs are having better title than the Society; and as the property is a vacant site and is incapable of actual possession, the plaintiffs' case of possession must be accepted in view of the settled legal position that in case of vacant sites incapable of actual possession, the principle 'possession follows title' is applicable. This contention is devoid of merit for the following reasons: 'In the case on hand, there is evidence to show even from the documents exhibited on the side of the plaintiffs that there is a Well and a pump house in the plaint schedule property. The defendants also produced documentary evidence in the form of exhibits to show that the electricity consumption charges in respect of the electricity service connection of the said pump house were being paid by the engineering college run by the Society.' Therefore the contention of the plaintiffs that the property is a vacant site and is not capable of actual possession and enjoyment is untenable. Further, the defendants produced evidence to show that for the entire property bearing MCH nos.8-2-249 to 8-2-267, the Society is paying property taxes and nala tax. It is trite to note that the learned senior counsel for the plaintiffs contended that the said MCH nos., are assigned to the structures of the Society in the adjacent land of Ac.18.10 guntas and therefore the tax receipts and nala tax receipts relate to the adjacent property but not to the plaint schedule property. If that is so, the plaintiffs ought not to have mentioned the above MCH nos., in the plaint schedule property. The very description of the plaint schedule property with the said MCH numbers would reflect that the said numbers relate to the entire property (including the plaint schedule property) in respect of which the Society is shown to have been paying property taxes. Though the case of the plaintiffs is that the property is vacant site and is incapable of actual possession, the plaintiffs also pleaded that the students and staff of educational institutions being run in the adjacent property are sporadically using the plaint schedule property for parking vehicles. *Per contra*, the defendants specifically pleaded that the property is in the possession of the Society since 1st November 1980, and that the Society is using the Well waters through the pump house and that the Well waters are catering to the needs of the educational institutions and students, gardening and upkeep of the premises for last more than three decades and that the watchman-security personnel are using the premises and are residing therein. It is not the case of the plaintiffs that the plaint schedule property is being put to use by the defendants or the Society for any activity, which is prejudicial to the interests of the plaintiffs. Further, injunction is granted generally not to alter the *status-quo*. Therefore, if no injunction is granted, according to the defence, the Society at best would use the Well and pump house by continuing to pay the electricity consumption charges for meeting the water requirements of its institutions and would also use the plaint schedule property for parking vehicles till the suit is finally disposed of. Even if that defence is to be accepted for a moment, no prejudice would be caused to the plaintiffs, who are anyhow not putting the property to any use much less a profitable use. On the other hand, if an injunction is granted as sought for and the use of Well and pump house and parking of vehicles is prevented, that would cause hardship to the Society, which is not a party to the *lis*. Therefore, granting injunction would work out hardship to a non party which is impermissible in view of the dictum of the Supreme Court in Bengal Ambuja Housing Development Ltd., and others v. Pramila Sanfui and others[1] wherein it was held that it is a well settled principle of law that either temporary or permanent injunction can be granted only against the parties to a suit. On thus weighing the

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[1] AIR 2015 SC 3729

competing possibilities or probabilities and the likelihood of injury, if an injunction would be issued, this Court finds that the balance of convenience is not in favour of the plaintiffs and that no irreparable injury would ensue to them, if no injunction is granted.

13.8 Eighthly: Dealing with the aspect of suppression of material facts, it is to be noted that the plaintiffs in their pleadings, having mentioned about the proceedings in which the Society was unsuccessful, suppressed the material fact that the Society filed CCCA.no.21 of 2004 before this Court assailing paragraph 15.8 of the common judgment and condition no.8 of the decree passed by the learned Chief Judge in OS.nos.154 and 181 of 2003 and also the further fact that the said CCCA was allowed by this Court and that later the Rev.CCCAMP.no.753 of 2007 filed by Shahamat Ali Khan and S.V.Naga Raja Reddy was dismissed by this Court as is evident from exhibits R1 and R2. When this contention that the plaintiffs suppressed the material facts was raised by the defendants, the plaintiffs, in their reply, gave an explanation as follows: - 'However, due to inadvertence in briefing the present counsel and due to confusion over voluminous documents, by oversight, we could not state about the order passed in CCCA.No.21 of 2004 and inadvertently the order passed in OS.no.154 of 2003 was only referred. Hence, the ignorance of not mentioning the order in CCCA.No.21 of 2004 is neither wilful nor wanton only for the reason stated above.' This Court is not impressed with the explanation offered belatedly in the reply to the counter as the plaintiffs having mentioned all the chronology of events in which the Society was unsuccessful purposefully failed to mention the eventual proceeding which culminated in the success of the Society. Viewed thus, this Court finds that the explanation offered to get over the material suppression of fact need not be countenanced. As already noted, the plaintiffs in their pleadings suppressed other material facts also and made misstatements and hence, it follows that the plaintiffs did not come to Court with clean hands. On this ground also the plaintiffs are not entitled to the equitable relief of temporary injunction. However, the learned senior counsel for the plaintiffs placed reliance on the decision in J.S. Business Enterprises (P) Ltd., v. State of Bihar [(2004) 7 SCC 166] in support of the contention that unless the fact suppressed is a material one and such suppression has an effect on the merits of the matter, on mere suppression of a fact, which is explained, the injunction cannot be refused. In the case on hand, the facts suppressed and misstatements made are material in nature and in-fact the said aspects misled the learned Chief Judge who passed the order impugned in this revision. Therefore, the decision is not helpful to the plaintiffs. Even otherwise, since this Court held that the plaintiffs have no *prima facie* case and that the balance of convenience is also not in their favour, this aspect of suppression of material facts and misstatement of facts etcetera would only be additional grounds for denying the equitable relief to the plaintiffs.

13.9 Ninethly: It is significant to note that the learned senior counsel and counsel appearing for the defendants first stated that the approach of the learned Chief Judge in passing the impugned order is arbitrary, capricious and perverse. They next strongly commented on the reasoning adopted in his order, which is impugned; further, in support of the said submissions they pointed out certain omissions and commissions on the part of the learned Chief Judge and stated that the approach of the learned Chief Judge is totally unjustified and unfair for the following among other reasons.

(i) On a plain perusal of the material record including the plaint, the interlocutory application and the documents filed by the plaintiffs, it is abundantly clear that the plaintiffs failed to produce the certificates of incorporation of the plaintiffs, which are private limited companies. Further, as per the provision under Order XXIX of the Code, in any suit by or against a Corporation a pleading has to be signed and verified on behalf of the Corporation by the Secretary or by any Director or other Principal Officer of the Corporation who is able to depose to the facts of the case. The said provision of Order XXIX Rule 1[2] does not speak of an authorised signatory who is not a Secretary or a Director or a Principal Officer of the Corporation. Accepting the submissions of the plaintiffs that an authorised signatory also can sign and verify the pleadings and institute the suit on behalf of the plaintiffs, be it noted that it is simply alleged in the plaint that S.V. Nagaraja Reddy is the authorised signatory of all the plaintiffs without mentioning any further details of any such authorisation. No resolution of the Board of anyone of the plaintiffs is filed whereby the said Nagaraja Reddy was appointed as an authorised signatory of anyone of the plaintiffs. No letter of appointment authorising him as authorised signatory is also filed. Despite such glaring

[2] Subscription and verification of pleading: - In suits by or against a Corporation, any pleading may be signed and verified on behalf of the Corporation by the Secretary or by any Director or other Principal Officer of the Corporation who is able to depose to the facts of the case.

failure to comply with the said legal requirements, the suit and the interlocutory application were numbered.

(ii) The trial Court not only granted an *ex parte* injunction but also police aid simultaneously on the same day. Naturally the said orders granting police aid were later set aside.

(iii) Portions of property covered by 'Mount Pleasant' were acquired by the Municipal Corporation of Hyderabad. On such occasions of acquisitions, notices were admittedly issued only to the Society and not to the plaintiffs. This fact *prima facie* reveals that the plaintiffs were never in actual possession of the plaint schedule property and therefore the MCH did not issue any notices to the plaintiffs with regard to acquisitions. Exhibit R20 makes the facts clear in this regard. It is a letter dated 22.8.1990 addressed to the Chairman of Sultan-Ul-Uloom Education Society by the Commissioner of Municipal Corporation of Hyderabad with regard to taking over of land of the Society under road widening proposal by payment of compensation. Under the said letter, it is informed that after ascertainment from the records an extent of 4851 square yards has been taken from the Society under the road widening scheme and that compensation at the rate of Rs.130 + 30% solatium per square yard, that is, Rs.169 per square yard as per existing procedure being followed by the MCH is payable and that the total compensation works out to Rs.8,19,819/- and that the amount will be paid following the usual procedure. Further, exhibit R21, letter dated 30.08.2005 addressed to the Secretary of the Society by the Assistant City Planner with regard to widening of road from Nagarjuna Junction to KBR junction, road no.2, Banjara Hills, Hyderabad, and the area affected under the said road widening in the premises bearing MCH No.8-2-249 to 267, is also related to the present plaint schedule property as well. In the said letter, while adverting to the letters written by the Secretary of the Society it was stated that to release the traffic congestion and to ensure public safety, the MCH has proposed to widen the road wherein the property of the Society bearing MCH no.8-2-249 to 267 is getting affected to the extent of 3484 square meters and that the proposed road widening is equal on either side except some place where the alignment of the road is changed little extra and that the MCH will reconstruct the structure affected or structural value will be paid as per R & B schedule of rates and that in lieu of the land value, the MCH will also consider additional FSI in terms of GOMs.no.483, MA, dated 24.08.1998. Further, co-operation of the Society was sought in the said letter for the said purpose. The letters concerning acquisition proceedings also amply lay bare that the plaintiffs' contentions are far from truth, *prima facie*. The defendants claim that the acquisition compensation was also paid to the Society is a decisive factor against the case of the plaintiffs.

(iv) Exhibit R17 also discloses that the Society paid property tax to the MCH in respect of the premises bearing

No.8-2-249 to 267, which numbers exactly correspond to the plaint schedule property. No similar documentary evidence was produced by the plaintiffs, still the learned Chief Judge ignored the said documents.

(v) The plaintiffs' specific case is that the suit and the interlocutory application are instituted against the defendants in their individual capacities and that the Society and Trust etcetera are not necessary parties. Though the defendants were admittedly shown in their individual capacities and temporary injunction was sought against them and their henchmen, the trial Court granted the injunction not only against the defendants and their henchmen but also passed an order prohibiting the parking of any vehicles of the defendants, staff and students of Sultan Ul Uloom Education society in the schedule property. The operative portion of the impugned order reads thus: - 'Accordingly, the respondents and their henchmen are hereby restrained by way of temporary injunction from interfering with the peaceful possession and enjoyment of the suit schedule property of the petitioners and by not parking any vehicles of the respondents, staff, students of the Sultan-Ul-Uloom Education Society in the schedule property, while pending the suit. In the result, the petition is allowed with costs.' In-fact in the relief claimed in the suit as well as the application, there is no reference to the Society. When the suit is admittedly instituted against the defendants in their individual capacities and when no relief is claimed against the Society or its office bearers, it is surprising as to how the trial Court granted orders restraining the parking of the vehicles of the staff and students of the Sultan-Ul-Uloom Education Society. Thus, an order of injunction was granted against the Society which is not a party to the *lis*. The defendants who are added as individuals cannot be said to be having control over the staff and students of the educational institutions of the Society. Yet the trial Court granted the relief by mentioning the name of the Society. It is a well settled principle of law that temporary or permanent injunction can be granted only against the parties to a suit.

(vi) The trial court also erroneously observed in its order that it is not the case of the respondents that the pump house is in an extent of 6 acres of the disputed land though the panchanama with its plan which is relied upon by the plaintiffs itself discloses that the pump house and Well are very much within the suit schedule land. Thus, the trial court by a factually incorrect observation over looked a crucial point having noted in its orders the pleaded case of the defendants on the said aspect.

(vii) The trial Court also went into the aspect of the right, title and interest of the Society in the property known as 'Mount Pleasant' in which the plaint schedule property is admittedly a part and made observations that the Society is concerned with the property excluding the plaint schedule property though the Society is not a party to the suit and the plaintiffs purposefully avoided to implead the Society or its office bearers as a party defendant/s to the suit. Therefore, the said observations in the order of the Court below are uncalled for and are also not justified.

(viii) Though the suit for specific performance was filed by the society and not the defendants herein, the plaintiffs falsely alleged that the defendants filed the said suit. Further, it was averred in the plaint that the educational institutions are of the defendants by mentioning 'defendants' educational institutions' though the educational institutions are of the Society. It is also averred in the plaint that in the earlier suit for specific performance the defendants pleaded that they are in possession of the disputed property under an agreement of sale though that suit for specific performance was filed by the Society and not by the defendants herein. Similarly, various averments were made in the pleadings of the plaintiffs identifying the defendants with the Society and vice versa, though even as per the case of the plaintiffs the defendants are arraigned in the suit in their individual capacities and the Society is not a necessary party to the instant suit. By thus incorrectly identifying the defendants with the Society certain averments were made in the pleadings of the plaintiffs touching upon the Society's lack of rights and interest over the plaint schedule property. Thus, the pleadings of the plaintiffs with regard to these aspects are in the nature of misstatements and are also misleading. The learned Chief

Judge was carried away by the said misrepresentations and misleading statements of the plaintiffs as is evident from his observations in the order impugned.

(ix) The plaintiffs deliberately made false averments in the plaint to the effect that under the Panchanama, exhibit P32, the property was delivered to the GPA holder of the plaintiffs herein though the said pleading is false to the knowledge of the plaintiffs herein and is quite contrary to material on record filed by the plaintiffs.

(x) The plaintiffs suppressed material facts while narrating the chronology of events and thus came to Court with unclean hands. They stated about the common judgment of the learned Chief Judge in the two suits filed by Fathima Fouzia and the proceedings of the Executive Magistrate and the delivery proceedings under exhibit P32, and the other proceedings in which the Society was unsuccessful but failed to state that the Society filed CCCA.no.21 of 2004 before this Court and the same was allowed by this Court as is evident from exhibit R1.

Thus, the learned Chief Judge ignored these vital aspects.

Suffice to observe that the omissions and commissions, which are pointed out and referred to supra, as rightly contended on behalf of the defendants, would lead to a safe inference that the learned trial Judge's approach to the matter is not appreciable. Further, the reasoning in the order impugned is not only contrary to material facts borne out by record but also is opposed to settled legal principles required to be followed and norms to be observed while passing an order in an interlocutory application for temporary injunction, which has serious consequences.

13.10 Tenthly: It is apt to note that the learned senior counsel for the plaintiffs placed reliance on a decision in Wander Ltd., and another v. Antox India (P) Ltd., [1990 Suppl SCC 727] on the scope of this CMA filed under Order LXIII and the jurisdiction and justification of interference by the appellate Court with the exercise of discretion of the Court of first instance. In the said decision which is rendered in a matter concerning use of a Trade mark, the relevant ratio is as follows: - 'The Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.' In the case on hand, for the reasons assigned and the findings so far recorded, this Court is of the view that the learned Chief Judge while passing the order impugned exercised his discretion capriciously and arbitrarily and further ignored the settled principles of law regulating grant or refusal of interlocutory injunction. Therefore, the decision is more helpful to the defendants.

13.11 Eleventhly: Before parting, it is necessary to make a passing reference to certain other contentions raised on behalf of the defendants. It is urged that the sale deeds of the plaintiffs were executed in violation of the provisions of Urban Land Ceilings and Regulation Act, 1976 and at a time when proceedings under the provisions of the said Act were pending in respect of the plaint schedule property and that therefore the plaint schedule property could not have been sold in the year 1994 and that therefore the sale transactions being relied upon by the plaintiffs are void as per provisions of the said Act. The learned senior counsel for the plaintiffs having pointed out that the said Act was repealed urged that the contentions of the defendants are untenable. It was also contended by the learned senior counsel Sri S. Niranjanreddy, that under the Indian Trusts Act, 1882, the definition of 'beneficial interest' excludes the notion of duality of the Estates and that in Indian law the legal heir of the Prince, that is, Shahamat Ali Khan, has no estate or interest in the subject mater of the Trust and that the Estate or ownership of the property vested in the Prince and that the Prince is the legal owner of the Trust property and that the interest of Shahamat Ali Khan, on the other hand, is strictly speaking not ownership at all but a right to the corpus of the Trust Fund or the balance thereof. Sri J. Prabhakar, learned counsel, having referred to the contents of the Deed of Trust, exhibit P2, and the supplemental agreement of the Trust, exhibit P3, pointed out that as per the contents of the said deeds, during the continuance of the Trust, at any time, the Prince is entitled to sell, transfer, convey or assign any land or building purchased or acquired or erected for the residence of the Prince and that therefore the contention that the Prince has no right to sell the property to the Society under an agreement of sale is untenable. It is further urged on behalf of the defendants that as provided under the Deed of Trust, with the corpus of the Trust Fund, the property known as Mount Pleasant was purchased for the residence of the Prince and that the Prince as per his entitlement leased out the entire property to the Society and that he later entered into an agreement of sale with the Society having shifted his residence from the Trust property and that the Trust property was converted into money/sale consideration and that therefore Shahamat Ali Khan is only entitled to balance corpus of the Trust Fund or the sale consideration realised or realisable from the sale of property and that a large portion of the sale consideration was already paid by the Society and that after the death of the Prince, the balance remaining belonged to Shahamat Ali Khan, the legal heir of the Prince, and that as he has no saleable interest in the property under the alleged sale deeds of the plaintiffs, which are nominal and sham, no title passed to the plaintiffs. However, in view of the discussion in the preceding paragraphs and findings already recorded supra, this Court is of the considered view that there is no need to go into the above said and other contentions more particularly in the light of the fact that the Society or the office bearers of the Society are not party defendants to the suit.

13.12 Lastly: It is appropriate to mention that the learned senior counsel and counsel for the defendants placed reliance on the following decisions:

1. Hanumant Kumar Talesara v. Mohan Lal[3] and V. Chandrasekaran and another v. Administrative Officer and others[4] is relied upon in support of the proposition that no one can convey a better title than what he himself possesses.

2. Bihar Deed Writers Association and others v. State of Bihar and others[5]; K. Eashaque v. Sub-Registrar, Kozhikode and another[6]; and Dr.Yadla Ramesh Naidu v. Sub-Registrar[7] are relied upon in support of the proposition that the registering authority is not enjoined with the duty to enquire and ascertain the title of the vendor of a document presented for registration.

3. S.P.Chengalvaraya Naidu (dead) by LRs v. Jagannath (dead) by LRs and others[8] is relied upon in support of the proposition that the case of a party based on falsehood is liable to be thrown out and that a party who withholds vital documents in order to gain advantage and fails to produce all documents which are relevant to the litigation, would be guilty of playing fraud on the Court as well as the opposite party.

4. Larsen & Toubro Ltd., v. State of Gujarat and others[9] is relied upon in support of the proposition that no issue can be raised on a plea which has no foundation in the pleadings and that details and particulars must be given to establish a plea taken.

5. Anand Prasad Agarwalla v. Tarkeshwar Prasad & others[10] is relied upon in support of the proposition that it is not appropriate for the Court to conduct a mini trial at the stage of disposal of interlocutory application.

6. Chief Conservator of Forests, Government of Andhra Pradesh v. Collector and others[11] is relied upon in support of the proposition that a legal entity-a natural person or an artificial person can sue and can be sued in its name. This decision was cited in view of the provision of the A.P. Societies Registration Act, 2001 wherein the Society is recognised as a corporate body, which can be sued in its name.

7. P. Chandrasekharan and others v. S. Kanakarajan and others[12] is relied upon in support of the proposition that in a suit involving immovable property the plaintiff claiming the relief has to adequately show that the property in the suit is identifiable.

8. Anathula Sudhakar v. P. Buchi Reddy (supra) is relied upon in support of the proposition that when the title to the property is under a cloud suit for injunction simpliciter is not maintainable.

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[3] (1988) 1 SCC 377
[4] (2012) 12 SCC 133
[5] AIR 1989 Pat 144
[6] AIR 2002 Kerala 128
[7] (2009) 1 ALD 337
[8] (1994) 1 SCC
[9] (1998) 4 SCC 387
[10] (2001) 5 SCC 568
[11] (2003) 3 SCC 472
[12] (2007) 5 SCC 669

9. Maria Margarida Sequeira Fernandes and others v. Erasmo Jack De Sequeira[13] is relied upon in support of the proposition that the person averring right to continue in possession shall give a detailed and specific pleading with sufficient particulars supported by documents and shall also plead the subsequent facts and events establishing possession.

On the other hand, the learned senior counsel for the plaintiffs placed reliance on the following decisions.

1. State of Bihar v. Sri RAdha Krishna Singh and others[14] is relied upon in support of the proposition with regard to admissibility of documents.
2. Hope Plantations Ltd., v. Taluk Land Board[15] is relied upon in support of the principle of estoppel which lays down that parties cannot litigate again on the same cause of action nor they can litigate on any issue which was necessary for decision in earlier litigation. This decision was perhaps relied upon as one of the contentions of the plaintiffs is that the Society withdrew its suit for specific performance. As already noted, in this *lis*, this court need not go into the merits and demerits of the claims of the Society for reasons already stated.
3. Ambika Prasad Takur v. Ram Ekbal Rai[16] is relied upon on the principle concerning presumption of continuity. In this decision it is laid down that in appropriate cases an inference of the continuity of a thing or state of things backwards may be drawn under the Section, though on this point the said Section 114 of the Indian Evidence Act does not give a separate illustration though the presumption of future continuance is noticed in illustration (d) of the said Section. In the case on hand, the decision is of no avail to the plaintiffs as this Court found that the plaintiffs have no *prima facie* case with regard to the plea of possession over the plaint schedule property.

Suffice to state that to the extent necessary, relevant and applicable, the legal principles in the cited decisions are applied to the facts of the case on hand while dealing with various aspects. Hence, there is no need to further elaborately deal with the legal principles in the cited decisions.

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[13] (2012) 5 SCC 370
[14] AIR 1983 SC 2033
[15] (1999) 5 SCC 590
[16] AIR 1966 SC 605

13.13 To sum up:

On the above analysis and the discussion coupled with reasons, this Court finds that the plaintiffs have no *prima facie* case, which is a sine-qua-non and that the balance of convenience is also not in favour of the plaintiffs and that no irreparable injury would ensue to the plaintiffs if no injunction is granted pending disposal of the suit and that the plaintiffs are not entitled to the equitable relief of temporary injunction, in the facts and circumstances of the case. As a sequel, this Court holds that the order impugned, which is devoid of merit, brooks interference. The points are accordingly answered against the plaintiffs.

14. In the result, the Civil Miscellaneous Appeals are allowed with costs and the order impugned in all these appeals is set aside. As a sequel, IA.No.2576 of 2015 in OS.no.496 of 2015 on the file of the trial Court is dismissed with costs.

Miscellaneous petitions, if any pending, shall stand closed.

M.Seetharama Murti, J

29th December, 2016
Vjl