

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

APPEAL AGAINST ORDER NO.23 OF 2021

- | | |
|---|--|
| <p>1) Devendra Dwarkadasji Agrawal
Aged about 73 years, Occu-Business,
R/o Moti Nagar, Amravati, Tq. & Dist.
Amravati.</p> <p>2) Sanjay Devendrakumar Agrawal
Aged about 48 years, Occu.Business,
R/o Daga Saphire, Camp, Amravati,
Tq. & Dist. Amravati.</p> | <p>... Appellants
(Ori.Plaintiffs)</p> |
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// VERSUS //

- 1) Smt. Savitridevi Ratanlal Agrawal,
Aged about 74 years, Occu. Household,
R/o Moti Nagar, Amravati, Tq. & Dist.
Amravati.
- 2) Anilkumar Ratanlalji Agrawal
Aged about 55 years, Occu.Business,
R/o Moti Nagar, Amravati, Tq. & Dist.
Amravati.
- 3) Sunilkumar Ratanlalji Agrawal
Aged about 53 years, Occu.Business,
R/o Moti Nagar, Amravati, Tq. & Dist.
Amravati.
- 4) Rajkumar Ratanlal Agrawal
Aged about 51 years, Occu.Business,
R/o Moti Nagar, Amravati.
- 5) Sau. Asha Vijaykumar Agrawal
Aged about 49 years, Occu. Household,
R/o Hiwarkhed Road, Akot, Tq. Akot,
Dist. Akola.
- 6) Sau. Madhuri Ashishji Potdar,
Aged about 43 year, Occu. Household,
R/o Opposite City Police Station,
Wardha, Tq. & Dist. Wardha.

- 7) Jyoti Rajkumar Agrawal
Aged about 45 years, Occu. Household
work, R/o Moti Nagar, Amravati, Tq. &
Dist. Amravati.
- 8) Sau. Kiran Anilkumar Agrawal,
Aged about 47 years, Occu. Household
work, R/o Dastur Nagar, Amravati,
Tq. & Dist. Amravati.
- 9) Amit Anilkumar Agrawal,
Aged about 25 years, Occu. Business,
R/o Moti Nagar, Amravati, Tq. & Dist.
Amravati.

... Respondents
(Ori. Defendants)

**WITH
APPEAL AGAINST ORDER NO.27 OF 2021**

- 1) Anilkumar Ratanlalji Agrawal
Aged about 55 years, Occu.-Business
- 2) Mrs. Kiran Anilkumar Agrawal,
Aged about 47 years, occu. Business,
- 3) Amit Anilkumar Agrawal,
Aged about 25 years, Occu.- Business,
All Nos.1 to 3 R/o Moti Nagar,
Amravati Tq. And Dist. Amravati.

... Appellants
(Ori.Defendants)

// VERSUS //

- 1) Devendrakumar Dwarkadas Agrawal
Aged about 73 years, Occu-Business,
R/o Moti Nagar, Amravati, Dist.
Amravati.
- 2) Sanjay Devendrakumar Agrawal,
Aged about 48 years, Occu.Business,
R/o. LIC Colony, Amravati, Dist.
Amravati.
- 3) Smt. Savitridevi Ratanlal Agrawal,
Aged about 74 years, Occu. Household,
R/o Moti Nagar, Amravati, Tq. & Dist.
Amravati.

- 4) Sunilkumar Ratanlal Agrawal
Aged about 53 years, Occ.-Business,
R/o Moti Nagar, Amravati, Dist.
Amravati.
 - 5) Rajkumar Ratanlal Agrawal
Aged about 51 years, Occu.-Business,
R/o Moti Nagar, Amravati, Dist.
Amravati.
 - 6) Asha Vijaykumar Agrawal
Aged about 49 years, Occu.- Household,
R/o Hiwarkhed Road, Akot, Tq. Akot,
Dist. Akola.
 - 7) Madhuri Ashish Potdar,
Aged about 43 year, Occu.- Houshold,
R/o Opp. City Police Station, Wardha,
Tq. & Dist. Wardha.
 - 8) Jyoti Rajkumar Agrawal
Aged about 45 years, Occu. Household,
R/o Moti Nagar, Amravati, Dist.
Amravati.
- ... Respondents
(the respondent no.1 and 2
are the original plaintiffs and
the respondent numbers 3 to
8 are the original
defendants.)

Appeal against Order No. 23 of 2021

Shri M.G. Bhangde, Senior Advocate assisted by Shri Shajal Sarda,
learned counsel for the appellants.

Shri R.L. Khapre, Senior Advocate assisted by Shri K.P. Mahalle,
learned counsel for the respondent Nos.2, 8 and 9

Appeal against Order No.27 of 2021

Shri R.L. Khapre, Senior Advocate assisted by Shri K.P. Mahalle,
learned counsel for the appellants.

Shri M.G. Bhangde, Senior Advocate assisted by Shri Shajal Sarda,
learned counsel for the respondent Nos.1 and 2.

CORAM :ANIL S. KILOR, J.
DATED : 20th DECEMBER, 2021.

JUDGMENT:

These two appeals are arising out of the order passed below Exh.20 dated 25th November, 2021 in Special Civil Suit No. 294 of 2021 passed by the 11th Joint Civil Judge, Senior Division, Amravati, partly allowing the application and thereby vacating the *ad interim ex parte* temporary injunction granted in respect of the suit property described in plaint para 2(iii) and further rejecting the prayers as regard vacation of *ad interim* temporary injunction in respect of the suit property described in plaint para 2(ii) and 2(xiii).

2. The brief facts which are relevant to decide the controversy involved in the present appeals are as follows: (the parties are referred to as per their status before the trial Court).

3. Appellants in Appeal against Order No.23 of 2021 are the original plaintiffs, who have filed a Special Civil Suit No. 294 of 2021 for partition, separate possession and injunction. The appellants in connected Appeal against Order No.27 of 202, are the defendant Nos.2, 8 and 9.

4. It is the case of the plaintiffs that they are entitled to partition of the joint family property described in the plaint.

5. The plaintiffs filed an application Exh.5 along with the aforesaid suit, under Order XXXIX Rule 1 and 2 read with Section 151 and 94 of the Civil Procedure Code, 1908 for grant of temporary injunction *inter alia* praying for restraining the defendants and any other person claiming through them from creating nuisance and obstructing the plaintiffs and their employees or nominees, from disturbing their possession over the suit property Nos.(iii), (xii), (xiii) and first and second

floor of suit property no.(ii) which are claimed to be in possession of the plaintiffs..

6. The learned 11th Joint Civil Judge, Senior Division, Amravati, heard the plaintiffs and by its order dated 29th October, 2021 granted *ad interim ex parte* temporary injunction, restraining the defendants from disturbing the possession of the plaintiffs over the suit property mentioned in paragraph 2 (ii) (first and second floor of this property), (iii) and (xiii).

7. Thereupon the defendant Nos.2, 8 and 9 appeared and filed application Exh.20 under Order XXXIX Rule 4 read with Section 151 of CPC, *inter alia* praying for discharge, vary and set aside the *ex parte ad interim* order dated 29th October, 2021, on the allegations that the plaintiffs have made false statement and suppressed the material facts.

8. The plaintiffs filed their reply to the application Exh.20 and denied all the allegations and prayed for rejection of application Exh.20.

9. The learned trial Court, after hearing both the parties, passed the impugned order dated 25th November, 2021, partly allowing application Exh.20 and thereby vacating the *ad interim* temporary injunction granted in respect of the suit property described in plaint in paragraph no. 2(iii), whereas, rejecting the application in respect of suit property described in plaint paragraph 2(ii) (first and second floor of this property) and (xiii).

10. Hence, these two appeals namely Appeal against Order No.23 of 2021 and Appeal against Order No.27 of 2021 are filed by plaintiffs

and the defendant Nos. 2, 8 and 9 respectively under Order 43 Rule 1(r) of the CPC.

11. I have heard learned counsel for the respective parties.

12. While considering these two appeals, I will deal first with Appeal against Order No.27 of 2021, as it covers most of the contentions of both the parties and then will deal with Appeal against Order No.23 of 2021.

13. Shri Khapre, learned Senior Advocate assisted by Shri Kuldeep Mahalle, learned counsel for the appellants/defendant Nos. 2, 8 and 9, submits that pleadings in the plaint show that the plaintiffs are claiming partition of the joint family properties in a capacity as co-owners. Therefore, they cannot maintain suit claiming injunction against the co-owners. In support of his contention, he has placed reliance on the following judgments in the case of *Prakash Sukhev Akotkar Vs. Mansoorkha Gulabkha*¹, *S. Venkatesh Babu Vs. Ms. Swetha*² and *Gochwal Leasing & Finance (P) Ltd. V. Harish Chand Jhamb*³.

14. Shri Khapre, learned Senior Advocate argues that the plaintiffs, being co-owners of the suit properties, cannot claim exclusive possession by way of injunction, however, it is permissible to seek injunction as regards joint possession which has not been claimed. Thus, he submits that the suit itself is not maintainable. In support of his contention, he has placed reliance on the following judgments in the case

¹ 1996 (2) Bom.C.R. 311

² 2010-3-L.W. 33

³ 1996 (37) DRJ(DB) 497

of *Md. Mohommad Ali Vs. Jagadish Kalita*⁴ and *Uday Narendra Shah Vs. Narendra Amritlal Shah*⁵.

15. It is further submitted that the learned trial Court ought to have rejected the plaint on the above referred ground, under Order 7 Rule 11 of CPC for not disclosing cause of action.

16. Shri Khapre, learned Senior Advocate has further drawn attention of this Court to numerous documents, namely registration certificate for GST, amendment made to such GST certificate adding furniture items, toll free number, photographs of shop, copy of insurance policy, shops and establishment registration, insurance policy, copies of GST invoice etc. Thereby, it is submitted that all these documents show that the defendants are in a settled possession of the suit properties. Thus, according to him, the *interim* injunction granted by the learned trial Court, was granted contrary to aforesaid documentary evidence.

17. It is submitted that the learned trial Court failed to consider three essential requirements for grant of injunction, namely *prima facie* case, balance of convenience and irreparable loss. He would submit that no findings are recorded on these three principles before granting *ad interim* injunction in favour of plaintiffs. In support of this contention, he has placed reliance on the following judgments, *Gochwal Leasing & Finance (P) Ltd. V. Harish Chand Jhamb* (Supra) and *R.K. Jain V. P. G. Chack*⁶

18. Shri Khapre, learned Senior Advocate has taken this Court through the findings recorded by the learned trial Court in the impugned

⁴ (2004) 1 SCC 271

⁵ (2014) 2 Bom.C.R. 722

⁶ AIR 2013 KARNATAKA 142

SKNair / Thaware

order below Exh.20 and submitted that the trial Court had adopted one sided approach while discarding the documents produced by the defendant Nos.2, 8 and 9 and while accepting the document of the plaintiff.

19. It is submitted that while granting *ad interim* relief in favour of plaintiffs without issuing notice to the defendants no explanation or justification has been offered by the learned trial Court, which ought to have been given in view of the fact that the application (Exh.5) was heard after a gap of seven days of filing the suit.

20. In reply, Shri Bhangade, learned Senior Advocate assisted by Shri Shajal Sarda, learned counsel appearing for respondent Nos.1 and 2/plaintiffs, submits that the scope of Order XXXIX Rule 4 of CPC is limited and most of the contentions raised by the learned counsel for the appellant is beyond the scope of the aforesaid provisions.

21. Shri Bhangde, learned Senior Advocate has drawn attention of this Court to the provisions of Order XXXIX Rule 4 of CPC, more particularly to the first proviso and submits that while exercising powers under the said provisions, the Court has to examine whether party has knowingly made a false or misleading statement in a relation to a material particular while granting injunction.

22. It is submitted that the word 'material particular' used in the said proviso, would mean such fact which has the potential on the merit of the case.

23. He has further placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Cement Marketing Co. of India Ltd*

Vs. Assistant Commissioner of Sales Tax, Indore and others (supra), and submits that for the purpose of provision of Order XXXIX Rule 4 of CPC, no statement can be said to be a false statement unless there is an element of deliberateness.

24. It is argued that the application-Exh.5 is pending for decision on merit. Therefore, if this Court in this appeal considers the contentions which are beyond the scope of Order XXXIX Rule 4 of CPC, it will amount to deciding Exh.5.

25. Shri Bhangade, learned Senior Advocate submits that the defendants have not challenged *ex parte ad interim* order on merit by filing appropriate proceeding and in absence of any such challenge in this appeal, this Court cannot go into the merit of the application (Exh.5), which is pending.

26. It is submitted that the grounds raised in the additional affidavit filed in this appeal have never been argued or raised before the trial Court and the documents filed alongwith the same were not the part of the application-Exh.20.

27. Shri Bhangade, learned Senior Advocate draws attention of this Court to the documents relied upon by the learned counsel for the appellants/defendants and submits that these documents are not sufficient to establish the possession of the defendants. It is argued that the learned trial Court has rightly maintained *ad interim* injunction in respect of suit properties mentioned in plaint paras 2(ii) and 2(xiii) after considering the documents filed by the plaintiffs. In support of his contention, he has

placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Rame Gowda Vs. M. Varadappa Naidu*⁷.

28. To consider the rival contentions of the parties in Appeal against Order No.27 of 2021, I have carefully gone through the record and order below Exh.20, impugned in the present appeals.

29. Before appreciating the contentions of both parties, on merit, I will first examine the scope of this appeal.

30. Admittedly, this appeal is arising out of the order below Exh.20 passed on the application under Order XXXIX Rule 4 of CPC.

31. At this stage, therefore, it is necessary to refer to the provision Order XXXIX Rule 4 and first Proviso to it, which reads thus:

“4.Order for injunction may be discharged, varied or set aside-

Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:”

32. It is clear from the above referred provision that any party dissatisfied with the order granting *ex-parte* injunction, can seek vacation of such *ex parte* injunction order on the ground that a party has knowingly made a false or misleading statement in relation to material particulars.

⁷ (2004) 1 SCC 769
SKNair / Thaware

33. This appeal is a continuation of application under Order XXXIX Rule 4 of CPC, therefore, it would be appropriate to hold that, what is appealable in this appeal is only findings recorded in relation to any false or misleading statement knowingly made in respect of material particulars.

34. Accordingly, this Court will now examine, whether the learned trial Court has rightly considered the case of the defendants under Order XXXIX Rule 4 of CPC, alleging that the plaintiffs have made a false and misleading statement in relation to a material particular while granting *ad interim* temporary injunction by the learned trial Court.

35. At this juncture it would be appropriate to refer to the pleadings made by the defendants in respect of suit property Nos. (ii), (iii) and (xiii) in the application Exh- 20, which read thus:

Suit property No(ii):-

It is submitted that on suit property no.2 purchase by the defendant no.2 and his Samsung Plaza shop running under the same, that it is submitted that on the first and second floor of the said property the goods of plywood of the defendant no.8 Kiran Anilkumar Agrawal is stored as she is having the business under the name and style “**Poonam Veneer and Laminates**”.

Suit Property No.(iii)

2. That in suit property at sr.no.(iii) having the running shop of the defendant no.2 under the proprietorship in name and fame “Poonam Electronics” Chaitanya Colony that on the basis of impugned order seems to passed on 29/10/2021, all of sudden on 31/10/2021 said shop at suit property no.(iii) lock was put by the plaintiff no.1 & 2 with help of the 25 to 30 anti-social elements on the gate and affixes the impugned order of the Hon’ble Court on the door and while the defendant no.2, 8 and 9 tried convince him the inturn they told that they wants rupees 5 Caror to open the lock and the police authority can’t do anything for above defendants. That it is submitted that the defendant no.2, 8 & 9 is in exclusive possession of the said suit property and having the running business in the same. That shop act license of said shop is in name of the defendant no.2 filed below list annexed with this application along with

GST certificate having the GST number 27AAPPA2722C1Z7. That not only this but also the telephone connection 0721-2541405 and 0721-2540401 having in occupied by the defendant no.2 in said suit property no (iii). That not only this the running shop in suit property no.(iii) is proprietor concern of the defendant no.2 and even today the goods up to 2 caror is there that the insurance policy for goods taken by the defendant no.2 and same is also filed on the record. That said Devendrakumar have no concern of possession on the basis of which application filed by making false statement that he has running the shop in said suit premises no.(iii).

3. That Devendra and Sanjay not having the exclusive possession over the suit property no.3 as alleged. It is submitted that on the basis of the impugned order lock was put on the door of the said suit premises at sr.no. (iii) and guards and anti-social elements got put by plaintiff Devendra and Sanjay. It is submitted that Hon'ble Court order cannot become the tool of extortion of money in view of this above defendant as immodesty court opens approaches before the Hon'ble court with this application. That there is loss of business of the defendant no.2, 8 & 9 due to said illegal act of plaintiffs on the basis of impugned order obtain by playing fraud over the Hon'ble Court and 50 employees and workers are lay set vacate due to putting of lock on the suit property no.iii by the plaintiffs on the basis of impugned order.

Suit property No.(xiii):-

It is submitted that the goods stored under the said suit property is belongs to the defendant no.8 as she his having the Godown and her goods under the said Godown stored the said goods is stored by her of her business **"Poonam Veneer and Laminates"**.

36. It is thus clear from the above referred pleadings that following submissions made by the learned counsel for the appellants were not raised before the learned trial Court. Moreover, looking to the scope of this appeal the same are also beyond the scope of this appeal. The contentions are, namely;

(i) The suit is not maintainable for the reason that the suit properties are joint family properties and the plaintiffs are the co-owners in the suit properties, and therefore, they cannot claim injunction against the co-owners;

(ii) The learned trial Court ought to have rejected the suit under Order VII Rule 11 of CPC for not disclosing any cause of action.

(iii) *Ad interim* injunction was granted by the trial Court despite the fact that the plaintiffs have failed to prove three necessary requirements i.e. *prima facie* case, balance of convenience and irreparable loss.

(iv) No explanation or justification has been offered by the learned trial Court, which ought to have been given in the light of the fact that the application (Exh.5) was heard after a gap of about seven days of filing the suit.

37. This Court therefore, will not go into the above referred contentions of the defendants/appellants in Appeal against Order No. 27 of 2021, for the reasons recorded herein above.

38. Now moving to other contentions of the defendants. It is the case of the defendants that the documents filed on record by the defendants have not been considered by the learned trial Court while considering the application Exh.20.

39. There is no dispute that the defendants have filed copies of GST invoice, shop and establishments registration, GST certificate, Insurance policy etc. on record in support of their case that they are in settled possession of the suit properties Nos. 2 (iii) and (xiii).

40. There is no dispute that the plaintiffs have also filed numerous documents on record in support of their case to establish that, they are in settled possession of the suit properties.

41. The Hon'ble Supreme Court of India while considering the scope of appeal in the case of Purshottam (supra) paragraph 31, has held thus:

"31. A Bench of three Judges of this Court laid down the law in this behalf in para 14 of the judgment which is as follows:

*"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, 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. The 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 that 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. After referring to these principles, Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* held: AIR 1960 SC 1156*

*'9....These principles are well established; but, as has been observed by Viscount Simon in *Osenton (Charles) & Co. v. Johnston*: 1942 AC 130*

"... The law as to the reversal by a Court of Appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case".

The appellate judgment does not seem to defer to this principle."

It is to be noted that the proposition laid down has been consistently followed thereafter."

42. Thus, it is clear that the Appellate Court should 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. Moreover, the appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below.

43. Undisputedly, this appeal is arising out of the order passed on the application under Order XXXIX Rule 4 of CPC. Accordingly, to examine whether the learned trial Court has committed any perversity in giving findings as relation to case set-forth by the defendants in the application Exh-20 alleging that, the plaintiffs have knowingly made false or misleading statement in relation to material particulars, I have carefully gone through and examined the pleadings made in application-Exh.20 and documentary evidence produced by both the parties and findings recorded by the learned trial Court, while maintaining the order of grant of *ad-interim* injunction in respect of suit property Nos. (ii) and (xiii).

44. In this matter the learned trial Court after elaborately examining the material produced by both the parties, by way of documentary evidence and after weighing the said evidence, has given categorical and explicit finding that nothing has been brought on record by the defendants to show that the plaintiffs have misled the court in respect of the fact that, they are in possession of suit property Nos.2(ii) and 2(xiii).

45. On appreciation of contentions raised by the learned counsel for defendants, it can safely be said that, it is not the case of the defendants that the view taken by the learned trial Court after weighing the pleadings and documentary evidence available on record, is not a plausible view. In this appeal the insistence of the defendants, appears to be, to adopt another plausible view by recording a conclusion different from the one reached by the learned trial Court, by reassessing the material which was on the record of the trial Court and also the material first time produce in this appeal.

46. It is a well settled law that the appellate Court shall not reassess the material and seek to reach a conclusion different from the one reached by the Court below. In this case nothing has been pointed out by the defendants to arrive at a conclusion that, the view taken by the learned trial Court, in this matter is not a plausible view. Moreover, the defendants have failed to point out that, the plaintiffs have knowingly made false or misleading statement in respect of material particulars as regards suit properties (ii) and (xiii). In the circumstances, I do not find that the trial Court has committed any perversity while passing the impugned order below Exh.20. Hence, I have no hesitation to hold that the rejection of application-Exh.20 vide impugned order in respect of suit property Nos. (ii) and (xiii) is just and proper and needs no interference by this Court.

47. Now, I am taking Appeal against Order No.23 of 2021 for consideration.

48. This appeal is restricted to suit property No.(iii) and the respondent Nos.2, 8 and 9 are claiming to be in possession over the said

suit property. Moreover, order, which is under challenge, was passed on Exh. 20 filed by respondent Nos. 2, 8 and 9, to whom Shri Khapre, learned Senior Advocate is representing in this appeal. In the circumstances, as the other respondents have not filed any application for vacation of *ad interim* injunction granted in favour of the plaintiffs and since they are not claiming to be in possession of the suit property No.(iii), they are formal party and any decision in this appeal will not adversely affect them. Hence, I am of the opinion that no prejudice would be caused to them if this appeal is heard and decided in absence of them. Accordingly, I proceed to hear and decide this appeal.

49. Shri Bhangade, learned Senior Advocate for the appellants/plaintiffs, submits that appellants, has restricted the challenge to the findings recorded by the trial Court in paragraph 32 of the impugned order dated 25th November, 2021, while vacating the *ad interim ex parte* temporary injunction in respect of suit property described in plaint in paragraphs 2 and 3.

50. It is submitted that, the learned trial Court has vacated the *ad interim* injunction granted in favour of plaintiff in respect of suit property described in plaint para 2(iii), on the ground that the plaintiffs have not disclosed the fact about the relinquishment deed dated 19th March, 2018 executed in favour of the plaintiff no.1 by the defendant no.2. It is further submitted that though the learned trial Court has observed that plaintiffs have suppressed the said material fact, however, it has not been pointed out as to how the non-disclosure of the fact of execution of relinquishment deed has a potential on merit of the case. It is, thus, submitted that in absence of such finding, as to how non-disclosure the

said document affects the merit of the present matter, vacation of *ad interim* relief granted in favour of plaintiff as regards to suit property described in plaint in para 2(iii), is beyond the scope of provision of Order XXXIX Rule 4 of CPC.

51. It is submitted that the aforesaid relinquishment deed does not speak anything about handing over of possession by the plaintiff to the defendant. At the same time, undisputedly it is not a registered document. According to him, therefore, at the best this document can be said to be an agreement to sell. It is argued that non-disclosure of such fact cannot be termed as suppression of material facts or making of any false or misleading statement in relation to material facts.

52. Shri Bhangade, learned Senior Advocate submits that defendant Nos.2, 8 and 9 instead of contesting the application-Exh.5, on merit by filing reply to it, the defendant Nos.2, 8 and 9 had chosen to file application under Order XXXIX Rule 4 of CPC. It is submitted that in respect of the suit properties mentioned in para 2(ii) and 2 (xiii), the learned trial Court has held that no ground has been made out under Order XXXIX Rule 4 of CPC to vacate the *ad interim* injunction in respect of said properties. However, on erroneous ground it has been vacated in respect of the suit property described in plaint para 2(iii).

53. Shri Khapre, learned Senior Advocate in reply submits that after considering the fact that the plaintiffs have not disclosed the fact of relinquishment deed executed by the plaintiff No.1 in favour of the defendant No.2, the learned trial Court has rightly vacated the *ad interim*

injunction granted in respect of suit properties mentioned in the plaint para 2(iii).

54. Shri Khapre, learned Senior Advocate further submits that as the plaintiffs had knowledge that the defendants are in possession of the suit property No.2(iii), there is no mention about handing over of possession in the relinquishment deed.

55. It is further submitted that as the plaintiff no.1 has given up his right over the stock in the shop and not as regards the title, there is no requirement of registration of such relinquishment deed.

56. It is argued that even if aforesaid document requires a compulsory registration, in absence of registration the same it can be used for collateral purpose. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Kale V. Deputy Director of Consolidation and others*⁸

57. In reply, Shri Bhangade, learned Senior Advocate has submitted that what is that collateral purpose has not been pointed out by the defendants.

58. In this backdrop, at this stage, it is necessary to refer to the relevant portion of the relinquishment deed dated 19.03.2010, which reads thus:

“बांधकामासह मी सदर मालमत्तेतील माझ्या वाटणीच्या हिश्यावरील अधिकार आज दि.१९.०३.२०१८ रोजी पुर्ण शुद्धीवर असतांना तसेच कुणाचाही दबावात न येता, सावध असतांना वाचून समजून तीन साक्षीदारासमक्ष वरील मालमत्तेवरील माझा हक्क सोडत आहे. संबंधीत मालमत्तेचा वर टॅक्स, विद्युतबील, पाणी बिल आणि कर्ज देण्यास श्री. अनिलकुमार रतनलालजी अग्रवाल बाध्य राहतील. वरील मालमत्तेची खरेदीखत तुम्ही सांगाल तेव्हा,

⁸ AIR 1967 SC 807
SKNair / Thaware

तुम्ही सांगाल त्या नावाने, तुमचे खचाने स.र. कचेरीत घेउन नोंदवून देईल,
उजर करणार नाही.”

59. On perusal of the findings recorded by learned trial Court in paragraph 32 of the impugned order dated 25th November, 2021, while vacating the *ad interim ex parte* temporary injunction in respect of suit property No.2(iii), it will be revealed that the learned trial Court has vacated *ad interim* injunction order on the ground that the plaintiffs have failed to disclose the fact of relinquishment deed dated 19th March, 2018.

60. However, the learned trial Court nowhere has observed or held that the plaintiffs have suppressed the fact of relinquishment deed knowingly or deliberately. The Court has also not held that the said fact has any relevance as regards the merit of the case. In absence of fulfillment of these pre requirements to exercise jurisdiction under Order XXXIX Rule 4, the trial court ought not to have disturbed the *ad- interim* injunction granted in favour of the plaintiffs.

61. Furthermore, after going through the above referred recitals of the relinquishment deed, it is clear that there is no mention of handing over of possession of the suit property by the plaintiff no.1 to the defendants. The said document, even does not say that defendant Nos.2, 8 and 9 are already in possession as argued by Shri Khapre, learned Senior Advocate.

62. At the same time, because the recitals of aforesaid document speak about giving up right of plaintiff no.1 in the aforesaid immovable property, prima facie it requires registration. There is no doubt that even in absence of registration, said document can be used for collateral

purpose, as argued by Shri Khapre, senior Advocate. However, he did not point out any collateral purpose for which it can be used in this case.

63. In the above referred backdrop and in absence of any specific mention of handing over of possession by the plaintiff no.1 to the defendants, of the said suit property, non-disclosure of said document cannot be termed as knowingly making false or misleading statement in respect material particulars in relation to suit property (iii).

64. In view of aforesaid observations, I have no hesitation to hold that the learned trial Court has committed error in allowing the application (Exh.20) thereby, vacating *ad interim ex parte* temporary injunction in respect of suit property described in plaint para 2(iii). Accordingly, I pass the following order :

- i. The Appeal against Order No.23 of 2021, is **allowed**.
- ii. The impugned order below Exh.20 dated 25th November, 2021, to the extend vacating *ad interim* injunction in respect of suit property described in plaint para 2(iii) and observation made in paragraph 32, are hereby quashed and set aside.
- iii. The Appeal against Order No.27 of 2021, is **dismissed**.
- iv. No order as to costs.

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[ANIL S. KILOR, J.]