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

**APPEAL FROM ORDER NO. 482 OF 2021
WITH
INTERIM APPLICATION NO. 3653 OF 2021**

Mr. Manish Mohanlal Pasari .. Appellant
VS.
Smt. Vimala wd/o. Mohan Pasari and ors. .. Respondents

Mr. Anand Mishra a/w Mr. Sushil Upadhyay i/b Mr. A.M.
Saraogi, for Appellant.
Ms. Pooja Jalan, for Respondents No. 1 and 2.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 13, 2022.

P.C. :

1. The order impugned dated 11/01/2021 is passed by the trial Court in Notice of Motion No. 1140 of 2020. Notice of Motion was filed by the plaintiff seeking temporary injunction restraining the defendants, their agents/servants and/or any other persons claiming through or under them from in any manner acting upon the alleged Gift Deed alleged to have been issued by defendant no. 1 in favour of the defendant no. 2 and/or be restrained from in any

manner from transferring the share of the defendant no.1 in respect of flat no. 101, situated at Triton Building, Green Field Society, A.B.Nair Road, Juhu, Mumbai, in favour of defendant no. 2 in any manner whatsoever. The appellant - original plaintiff is the son of the respondent no. 1- original defendant no.1. Respondent no. 2- original defendant no. 2 is the daughter of the defendant no.1. The trial Court in paragraph 2 while dismissing the Notice of Motion has observed thus:

"2. The defendants have filed affidavit in reply to oppose grant of interim/ad-interim reliefs and also affidavit to place on record subsequent events. As per the averments in the affidavit dated 4th November, 2020, the defendant no. 3 society has transferred the defendant no. 1's, 50% share in the suit flat in favour of defendant no. 2 and Share Certificate has also been transferred in record of the defendant no.3. The defendants have also placed on record Share Certificate showing that 50% shares have already transferred in the name of defendant no.2. In view of the subsequent events, the Notice of Motion has become infructuous and is liable to be disposed of."

2. I do not find any perversity with the view taken by the trial Court. It is in view of the intervening circumstances the trial Court observed that the notice of motion as filed was rendered infructuous. This however will not preclude the appellant – plaintiff from filing appropriate notice of

motion seeking appropriate reliefs before the trial Court. Also, in view of the intervening circumstances, if such notice of motion seeking appropriate interim relief is filed, the same shall obviously be decided on its own merits without being influenced by any observations made in the impugned order.

3. One of the contentions of the learned counsel for the appellant is that the trial Court should have decided the chamber summons which is at page 61 before deciding the notice of motion. I do not find any substance in the contention of the learned counsel for the appellant as no prejudice would be caused to the appellant as the chamber summons is yet to be heard. The trial Court is requested to expedite the hearing of the chamber summons where the reliefs are sought in the nature of amendment to the plaint.

4. Appeal from Order is disposed of. All contentions are kept open. In view of disposal of the Appeal from Order, Interim Application also stands disposed of.

(M. S. KARNIK, J.)