

Mr. S.G.Maheshwari for Appellant.
Mr. G.S.Godbole i/by Mr. Devashish Godbole and Pradeep Salgar for Respondent
Nos.1 to 3.

DATE: 7 JUNE 2023

1. This appeal is directed against an order dated 12 October 2022 passed by the learned Judge, City Civil Court at Dindoshi, Mumbai whereby the Notice of Motion No.2344 of 2019 taken out by the Appellant-Plaintiff in S.C.Suit No.1677 of 2019 seeking to restrain Respondent Nos.1 to 3 – Defendant Nos.1 to 3, from transferring Flat Nos.156 and 156A situated at Shaheed Bhagat Singh Society, Guru Nanak Nagar, Andheri (E), Mumbai, (the suit property) came to be dismissed. The Appellant-Plaintiff had also sought an injunction to restrain Defendant Nos.1 to 3 from creating third party interest over the suit property or parting with possession and also restrain Defendant No.12 Society from transferring the suit property in the name of any person.

2. The background facts leading to this appeal can be stated in brief as under :

Gurbaksh Singh Anand was the father of the Plaintiff, Defendant Nos.4 to 6 and Twinder Singh Gurbaksh Singh Anand, the predecessor in title of Defendant Nos.1 to 3. Gurbaksh Singh died on 5 April 2013 leaving behind the Plaintiff, Defendant Nos.1 to 6 and late mother of Defendant Nos.1 to 3 Smt. Harjit Kaur Twinder Singh Anand, and his another son late Ranbir Singh Gurbaksh Singh Anand as his only legal heirs. Defendant No.7 is the wife and Defendant Nos.8 to 11 are the children of late Ranbir Singh.

3. Gurbaksh Singh was the owner of the suit property. It is situated in the premises of Defendant No.12 Society. After the demise of Gurbaksh Singh, the suit property devolved on the Plaintiff and Defendant Nos.1 to 11.

4. The Plaintiff claimed that the Plaintiff and each one of the Defendant Nos.1 to 11 had resided in the suit property at some point of time. Defendant Nos.1 to 3, who are in possession of the suit property, hold the same on behalf of the Plaintiff and Defendant Nos.4 to 11. Plaintiff and each of the Defendant Nos.1 to 11 have undivided interest in the suit property.

5. Defendant Nos.1 to 3 are denying right and interest of the Plaintiff and Defendant Nos.4 to 11 in the suit property. Hence, a legal notice was addressed to the Defendant Nos.1 to 3 on 28 May 2019, seeking partition of the suit property.

Defendant Nos.1 to 3 are attempting to sell the suit property and thereby defeat the right, title and interest of the Plaintiff and Defendant Nos.4 to 11 in the suit property. Hence, the suit for declaration, partition and separate possession of the suit property.

6. In the said suit, the Plaintiff took out a Notice of Motion seeking to restrain Defendant Nos.1 to 3 from transferring the suit property and from creating any third party interest therein or parting with possession thereof. Defendant No.12 Society was also sought to be restrained from transferring the suit property in the name of any person.

7. Defendant Nos.1 to 3 resisted the claim of the Plaintiff. It was, inter alia, asserted that late Gurbaksh Singh Anand was the sole owner of the suit property and on account of the strained relations with the Plaintiff and other family member, as well as love and affection towards late Twinder Singh and his family members, Gurbaksh Singh had gifted the suit property in favour of Harjit Kaur, wife of Twinder Singh Anand, under a registered Gift Deed dated 10 December 2009. The Plaintiff has not been in possession of the suit property. Thus, the Plaintiff was not entitled to seek injunctive reliefs.

8. By the impugned judgment and order dated 12 October 2022, the learned Judge, City Civil Court was persuaded to reject the Notice of Motion, holding that the Plaintiff was aware about the execution of the Gift Deed as the share certificate which was annexed to the Plaint appeared to be a part of the registered Gift

Deed; the Plaintiff had not been in possession of the suit property and the averments in Suit No.2761 of 2004 instituted by late Gurbaksh Singh Anand against the Plaintiff and others indicated that the relations between Gurbaksh Singh Anand and the Plaintiff were quite strained as allegations of harassment were also made against the Plaintiff. Since there was no challenge to the Gift Deed, despite the Plaintiff being aware of its existence, the learned Judge opined that there was no prima face case made out by the Plaintiff.

9. Being aggrieved, the Plaintiff is in Appeal.

10. I have heard Mr.Maheshwari, learned Counsel for the Appellant and Mr. Godbole, learned Senior Advocate for Respondent Nos.1 to 3.

11. The learned Counsel for the Appellant submitted that the Plaintiff and Defendant Nos.1 to 11 have an undivided interest in the suit property and, thus, the suit property is required to be protected during the pendency of the suit for partition. The learned Judge, City Civil Court, according to the learned Counsel for the Appellant, did not properly appreciate the fact that the alleged gift deed was not acted upon during the lifetime of Gurbaksh Singh Anand, the alleged donor, and even for long time after the demise of donor. An endeavour was made to demonstrate that in the written statement filed by late Gurbaksh Singh Anand in Suit No.1327 of 2011, there was no reference to the fact that he had gifted the suit property in favour of Harjit Kaur. The learned Counsel for the Appellant made a further endeavour to

demonstrate that the intrinsic evidence of Gift Deed indicates that it is not a genuine instrument.

12. In opposition to this, the learned Senior Advocate appearing for Respondent Nos.1 to 3 would support the impugned order. It was submitted that the trial Court had taken a justifiable view of the matter, which is not required to be interfered with.

13. The prime reason which weighed with the learned Judge, City Civil Court was the fact that the share certificate (Exhibit B) which was annexed to the plaint appeared to form part of the registered gift deed. On that strength, knowledge was attributed to the Plaintiff. In any event, even after Defendant Nos.1 to 3 relied upon the registered gift deed, no effort was made on behalf of the Plaintiff to assail the legality and validity of the said gift deed. In the face of the material to show that the relations between late Gurbaksh Singh Anand and the Plaintiff, in particular, were strained, the learned Judge, City Civil Court, drew prima facie inference that the claim of the Plaintiff that the Plaintiff and other legal representatives of late Gurbaksh Singh Anand have had resided in the suit property, did not appear nearer to the truth.

14. The gift deed appeared to have been registered on 10 December 2009. Indisputably, a copy of the share certificate relied upon by the Plaintiff (Exhibit B) to show that the suit property stood in the name of late Gurbaksh Singh in the record of the Respondent No.12 appeared to be part of the documents annexed to the Gift Deed

as it contains an endorsement by the Registrar. In any event, time lag between the execution of the gift deed and the institution of the suit of about nine and half years, coupled with the fact that late Gurbaksh Singh had been residing with the donee and her children, by late son Twinder Singh, renders it rather difficult to readily accept the claim of the Plaintiff that he was unaware of the execution of the gift deed.

15. On the aspect of possession, the learned Judge, City Civil Court recorded a prima facie justifiable finding that the Plaintiff had not been residing in the suit property. In the written statement, filed by late Gurbaksh Singh, on which reliance was sought to be placed on behalf of the Plaintiff, it was contended that since 1980, late Twinder Singh and his family were residing in Flat No.156. Conversely, there is no material to lend prima facie support to the claim of the Plaintiff that the Plaintiff and other legal heirs of late Gurbaksh Singh had been residing in the suit property.

16. Since there is a registered gift deed, it was incumbent upon the Plaintiff to seek a declaration about its legality and validity. Absence of challenge to the validity of the gift deed, coupled with the fact that there are concomitant circumstances which indicate that the relations between late Gurbaksh Singh and the Plaintiff were strained to the point that late Gurbaksh Singh had instituted a suit against the Plaintiff, render it difficult to discard the gift deed, at this stage.

17. It is true that in the event the Plaintiff or any of the legal representatives

of late Gurbaksh Singh succeed in dislodging the gift deed, the suit property would devolve by succession. However, to draw such an inference, there must first be a challenge to the legality and validity of the gift deed and, second, the circumstances which would, prima facie, indicate invalidity of the gift deed. Moreover, having regard to the fractious relationship which the Plaintiff and Gurbaksh Singh shared, the challenge especially at the instance of the Plaintiff, has to surmount impediments.

18. In the aforesaid view of the matter, the learned Judge, City Civil Court cannot be said to have exercised discretion in an unjustifiable manner. The learned Judge kept the principles which govern the grant of temporary injunction in view and correctly applied those principles to the facts of the case and arrived at a justifiable findings. Such a discretionary order is not amenable to correction in exercise of limited appellate jurisdiction.

19. The Appeal stands dismissed.

20. In view of the dismissal of the Appeal, Interim Application also stands dismissed.

(N.J.JAMADAR, J.)