

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.28 OF 2021
IN
CHAMBER SUMMONS NO.731 OF 2005
IN
EXECUTION APPLICATION NO.192 OF 2002
IN
SUMMARY SUIT NO.491 OF 1999**

Naman Mahadev Patel

....Appellant

V/s.

Jetu Jaques Taru Lalwania & Ors

...Respondents

**WITH
INTERIM APPLICATION (L) NO.32778 OF 2022
IN
APPEAL NO.28 OF 2021**

Mr. Sunip Sen, Senior Advocate a/w Mr. Amit Shroff, Ms Ashna Shah, Ms Jyoti Ghag and Mr. Vishal Sapre i/b Dua Associates for Appellant.
Mr. Yatin Shah for Respondent No.1.

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL JJ
DATED : 10th APRIL 2023**

P.C. :

1 Appellant is impugning an order dated 22nd January 2020 passed by a Learned Single Judge of this court.

2 One of the issue that was to be decided by the Learned Single Judge in the impugned order was, whether the gift of the share certificate by Mr. B. N. Patel to Mr. Naman Patel is vitiated because of fraud ? The Learned Single Judge answered the issue by observing that it was incumbent upon appellant to prove the document of gift deed dated 5th August 1993 and

neither original document is placed on record, nor the same has been proved in any manner known to law. The court went on to answer that since the document itself has not been proved, the question of answering whether it is vitiated by fraud, does not arise. That is how we read paragraph 8 of the impugned order.

3 Mr. Sen very fairly states that appellant did not bring to the notice of the Learned Single Judge the order dated 20th July 2005 passed in Chamber Summons No.731 of 2005 because according to Mr. Sen, the issue as framed presupposed that there was a gift deed in place. Mr. Sen states that in the order of 20th July 2005, the Judgment Creditor has admitted that there is a gift deed but according to Judgment Creditor it is not a valid gift deed.

4 In the impugned order, this order of 20th July 2005 has not been brought to the notice of the court, for the court to consider whether even in such circumstances, the gift deed had to be proved independently.

5 In the circumstances, Mr. Sen seeks leave of the court to withdraw the appeal with liberty to file review petition.

6 Keeping open all rights and contentions of the parties, appeal dismissed as withdrawn with liberty as prayed for.

7 Consequently, interim application also stands disposed.

(RAJESH S PATIL, J.)

(K.R. SHRIRAM, J.)