

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.34 OF 2020
IN
NOTICE OF MOTION NO.987 OF 2014
IN
SUIT NO.717 OF 2013**

Zainab Rafiullah Shaikh]
Aged : 47 years, occu : Business]
Having office at : Singh House,]
Office No.10, 2nd floor,]
23, Ambalal Doshi Marg,]..... Appellant
Fort, Mumbai 400 023.](Original Defendant No.3)

Versus

- 1] Puthenveedu Joseph Mathew]
Aged : 65 years, occu: Business]
Having office at : 2nd floor]
23/25, Ambalal Doshi Marg]
Earlier known as Hamam Street]
Near Stock Exchange Post Office]
Fort, Mumbai 400 023.]
]
2] Mr. Kurian Thomas]
Aged about__yrs Occu:Business]
Residing at No.5, Mohammed]
Mohammedbhai Mansion]
3rd floor, N. S. Patkar Marg]
Kemp's Corner, Mumbai-400036]
]
3] Mr. Labh Singh s/o Daya Singh]
Deleted since Deceased]
Mrs.Sukhraj Labh Singh]....Respondents.
Aged about 75 years](Resp.No.1-Orig. Plaintiff)
Residing at 91, Vallabh]Resp.Nos.2 & 3 - Original)

Apartments, Warden Road,]Defendant Nos.1 and 2)
Mumbai – 400006.]

**WITH
INTERIM APPLICATION NO.515 OF 2019
IN
APPEAL NO.34 OF 2020**

Zainab Rafiullah Shaikh] Applicant/Appellant.

Vs.

Puthenveedu Joseph Mathew & ors.] Respondents.

**ALONG WITH
APPEAL NO.35 OF 2020
IN
NOTICE OF MOTION No.302 OF 2013
IN
SUIT NO.695 OF 2012**

Zainab Rafiullah Shaikh]
Aged : 47 years,]
occu : Business, Indian Inhabitant]
Having office at : Singh House,]
Off. No.10, 2nd floor,]
23, Ambalal Doshi Marg,]..... Appellant
Fort, Mumbai 400 023.](Original Defendant No.3)

Vs.

1] Mr. Labh Singh Daya Singh]
Deleted since Deceased]
Mrs.Sukhraj Labh Singh]
Aged about 75 years]
Residing at 91, Vallabh]
Apartments, Warden Road,]
Mumbai – 400006.]

- 2] Mr. Kurian Thomas]
Age unknown, Indian Christian]
Inhabitant, Occupation Business]
Residing at No.5, Mohammed]
Mansion, 3rd floor, N. S. Patkar]
Marg, Kemp's Corner,]
Mumbai-400026]
]
- 3] Puthenveedu Joseph Mathew]
Aged: 65 years, Indian Christian]
Inhabitant, Occupation Business]....Respondents.
Having office at 2nd floor](Resp.No.1-Orig. Plaintiff)
Afzal Mansion B, Bharucha Marg]Resp.Nos.2 & 3 - Original)
Kalaghoda Fort,Mumbai-400 001]Defendant Nos.1 and 2)

**WITH
INTERIM APPLICATION NO.512 OF 2019
IN
APPEAL NO.35 OF 2020**

Zainab Rafiullah Shaikh] Applicant/Appellant.

Vs.

Mr. Labh Singh Daya Singh
Deleted since Deceased
Mrs. Sukhraj Labh Singh & ors.] Respondents.

**ALONG WITH
APPEAL (L) NO.138 OF 2020
IN
NOTICE OF MOTION NO.302 OF 2013
IN
SUIT NO.695 OF 2012**

Mr. Labh Singh Daya Singh]
 (Since Deceased)]
 Smt.Sukhraj Labh Singh, Adult]
 Aged about 74 years]
 Residing at 91, Vallabh]
 Apartments, 87 Bhulabhai]
 Desai Road, Mumbai – 400026.].....Appellant.

Vs.

- 1] Mr. Kurian Thomas]
 Age Unknown, Indian Christian]
 Inhabitant, Occupation Business]]
 Residing at No.5, Mohammed]
 Mansion, 3rd Floor,]
 N. S. Patkar Marg,]
 Kemp's Corner, Mumbai 400 026]]
- 2] Mr. Puthenveedu Joseph Mathew]]
 Age 65 years, Indian Christian]
 Inhabitant, Occupation Business]]
 having office at 2nd Floor,]
 Afzal Mansion B. Bharucha Marg]
 Kalaghoda, Fort,]
 Mumbai – 400001]]
- 3] Zainab R. Shaikh]
 Age about : 30 years,]
 Occupation : Not known,]
 Indian Sunni Muslim, Inhabitant]
 of Mumbai, at Yusuf Manzil,]
 2nd Floor, Room No.42,]
 Peerkhan Street, Sophia Zubair]
 Road, Nagpada,].... Respondents/
 Mumbai – 400 008] Original Defendants.

**WITH
INTERIM APPLICATION (L) NO.2978 OF 2020
IN
APPEAL (L) NO.138 OF 2020**

Labh Singh Daya Singh	]	
(Since Deceased)	]	
Smt. Sukhraj Labh Singh	]	Applicant/Appellant

Vs.

Kurian Thomas & ors.	]	Respondents.
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Mr. Anil V. Anturkar, Senior Advocate a/w Mr. Pradhuman Chauhan and Mr. Arya Sapre for the Appellant/Applicant in Appeal Nos.34 of 2020 and 35 of 2020 and for Respondent No.3 in Appeal (L) No.138 of 2020.

Mr. Mayur Khandeparkar a/w Mr. Vikramjit Garewal, Mr. Umesh Tiwari i/by Advocate Rashmi Pendse for Respondent No.3 in Appeal No.34 of 2020, for Respondent No. 1 in Appeal No.35 of 2020 and for the Appellant in Appeal (L) No.138 of 2020.

Mr. S. K. Dhekale, Court Receiver, present.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

Reserved on : 12th February 2024

Pronounced on : 02nd April 2024

JUDGMENT : (PER ARIF S. DOCTOR, J.)

1. The captioned three Appeals all challenge the same order i.e. the order dated 4th and 5th July 2019, by which the Learned Judge has disposed of Notice of Motion No. 302 of 2013 and Notice of Motion No. 987 of 2014.

2. At the outset, it is necessary to set out the context in which the Appeals have been filed. Since submissions were essentially advanced in Appeal No. 35 of 2020, the same was treated as the lead matter and reference to the parties in this Order shall be as they are arrayed in Appeal No. 35 of 2020 ("the said Appeal").

3. Before we proceed to deal with the rival contentions advanced, it is useful to set out the following facts, viz.

- (i) The central issue and rival claims between the contesting parties i.e. the Appellant (Zainab Sheikh)

and Original Respondent No. 1 - Labh Singh (since deceased, for the sake of convenience, referred to as "Respondent No.1 - Labh Singh") are in respect of an office/commercial premises situated in the Fort area of Mumbai, admeasuring 1,130 sq.ft. on the 2nd floor ("**the said premises**") of a building known as Singh House ("**the said building**") situated at Ambalal Doshi Marg, Fort, Mumbai – 400 023.

- (ii) It is not in dispute that the Appellant is (and has been since at least the year 2011) in use, occupation and possession of the said premises. Respondent No.1 (**Labh Singh**) in the year 2011 filed Suit No. 695 of 2012 [Suit (L) No. 3359 of 2011] under the provisions of Section 5 of the Specific Relief Act *inter alia* seeking eviction of the Appellant, Respondent Nos. 2 (**Kurian Thomas**) and Respondent No. 3 (**Mathew**) from the said premises on the ground that they were all trespassers.

- (iii) On 19th December 2011 this Court by an ad interim order passed in draft Notice of Motion subsequently numbered as Notice of Motion No. 302 of 2013 in Suit No.695 of 2012, noting that the Appellant was in possession of the said premises, permitted the Appellant to continue in possession as the agent of the Court Receiver without payment of any royalty.

- (iv) Conversely, Respondent No.3 (Mathew) subsequently has filed Suit No.717 of 2013 under the provisions of the Section 6 of the Specific Relief Act, 1963 *inter alia* claiming that he was forcibly dispossessed from the said premises by the Appellant and therefore sought possession of the said premises from the Appellant. In the said Suit, Respondent No.3 took out a Notice of Motion (being Notice of Motion No. 987 of 2014) in which Respondent No. 3 has *inter alia* sought appointment of the Court Receiver and to be put in

possession of the said premises without payment of any royalty.

- (v) Both the Notices of Motion were then finally heard and disposed of by the Impugned Order in the following terms, viz.

"(i) The ad-interim order dated 19th December, 2011 passed by this Court appointing the Court Receiver, High Court Bombay as Receiver of the Suit Premises is confirmed;

(ii) The Court Receiver, on a date fixed by him, shall fix an appointment calling upon defendant No. 2 and 3 in Suit No. 695 of 2012 to attend his office for the purposes of bidding. Whoever is the highest bidder shall be appointed as the Agent of the Court Receiver on the payment of royalty which will form the subject-matter of the bid, but without the payment of any security. The successful bidder shall then execute the Agency Agreement with the Court Receiver;

(iii) The royalty collected by the Court Receiver shall be kept by the Court Receiver and be subject to further orders that may be passed in the Suit;

(iv) In the event the successful bidder (namely defendant No.2 or defendant No.3, as the case may be) commits two defaults [not consecutive] in the payment of the royalty, or in executing the Agency Agreement, the Receiver shall then dispossess the said Agent and file a report in this Court for further action to be taken with reference to the suit premises;

(v) In addition to the appointment of the Court Receiver, defendant Nos. 1 to 3 are restrained by an order of injunction of this Court, either through themselves and/or their agents, servants and/or any other person claiming through or under them from disposing of, alienating and/or creating any third party rights and/or interest in respect of the suit premises or any part thereof and more particularly described in Exhibit-A to the plaint;

(vi) It is clarified that any maintenance charges etc., with reference to the suit premises shall be expended by the Court Receiver from the royalty received either from defendant No. 2 or defendant No.3 as the case may be. It is further clarified that the payment of royalty shall commence from the date of the execution of the Agency Agreement by the Receiver with the successful bidder;

(vii) Needless to clarify that before calling the parties for bidding, the Court Receiver shall fix a reserve price taking into consideration the market-value of the property and other relevant factors and for this purpose, if necessary, the Court Receiver shall call for a valuation report. The charges for this valuation report at the first instance shall be borne by the plaintiff;

(viii) If any licenses are required by the successful bidder for carrying out the business from the suit premises and of which the Court Receiver has already been appointed, the Receiver shall co-operate with the successful bidder. It is clarified that merely obtaining the licenses, if any, shall not in any way alter the status of successful bidder or the nature of the suit premises and no party shall be entitled to claim any equities on the basis of the aforesaid licenses."

(vi) It is in the above backdrop that the captioned Appeals have been filed, viz.

- i. Appeal No. 34 of 2020 in Notice of Motion No.987 of 2014 and Appeal No. 35 of 2020 in Notice of Motion No.302 of 2013 filed by

Appellant (Zainab Sheikh) essentially seeking to set aside the Impugned Order.

- ii. Appeal (L) No. 138 of 2020 filed by Respondent No.1 (Labh Singh) in which Respondent No.1 has essentially sought that the direction for payment of Royalty must be from 19th December 2011 and not the date of the Impugned Order.

Submissions of Mr. Anturkar on behalf of the Appellant.

4. Mr. Anturkar, at the very outset, submitted that an order appointing a Court Receiver under the provisions of Order XL Rule 1 of the Code of Civil Procedure, 1908 ("the CPC"), was not an order that could be passed in routine and/or casual manner. He submitted that it had become common practice for Courts to appoint a Court Receiver even when such appointment was not warranted in law i.e., the requirements of Order XL Rule 1 of the CPC were not met or in cases where an order of injunction could just as well suffice.

5. He then invited our attention to the provisions of Order XL Rule 1 of the CPC and pointed out that the words '**just and convenient**' which have been used therein were of great importance. He submitted that these words have only been used in Order XL of the CPC and nowhere else. To emphasize the importance of the use of the words '**just and convenient**' he invited our attention to Order XLVI Rule 7 of the CPC and Order XXXIX Rule 6 of the CPC and pointed out that the words used therein were '*just and proper*' and '*just and sufficient*' respectively. He thus submitted that a Court Receiver could only be appointed when a Court finds it '**just and convenient**' to do so and not otherwise.

6. Mr. Anturkar fairly submitted that while an order appointing a Court Receiver, need not to use the words *just and convenient* in the body of such order, what was however essential was that the order appointing the Court Receiver, must necessarily reflect the Court's subjective satisfaction that such

appointment was infact '*just and convenient*'. In the present case, he submitted that the Impugned Order was completely bereft of any reasoning to support why in the facts of the present case it was "*just and convenient*" to appoint a Court Receiver when an order of injunction could well have sufficed.

7. Mr. Anturkar then invited our attention to the judgement of the Madras High Court in the case of ***T. Krishnaswamy Chetty vs. C. Thangavelu Chetty and others***¹ to submit that the said judgment laid down the five principles, which was both well known and well accepted as the *panch sadachar* test, when exercising equity jurisdiction in the appointment of Court Receivers. He invited our attention to paragraph 17 of the said judgment and set out the *panch sadachar* test which read thus viz.

"17. *The five principles which can be described as the 'panch sadachar' of our Courts exercising equity jurisdiction in appointing receivers are as follows:*

(1) *The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound*

1 1954 SCC OnLine Mad 374

and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding: - 'Mathusri v. Mathusri,' 19 Mad 120 (PC) (Z5); - 'Sivagnanathammal v. Arunachallam Pillai', 21 Mad LJ 821 (Z6); - 'Habibullah v. Abtiakallah', AIR 1918 Cal 882 (Z7); - 'Tirath Singh v. Shromani Gurudvvara Prabandhak Committee', AIR 1931 Lah 688 (Z8); - 'Ghanasham v. Moraba', 18 Bom 474 (Z9); - 'Jagat Tarini Dasi v. Nabagopal Chaki', 34 Cal 305 (Z10); - 'Sivaji Raja Sahib v. Aiswariyanandaji', AIR 1915 Mad 926 (Z11); - 'Prasanno Moyi Devi v. Beni Madhab Rai', 5 All 556 (Z12); - 'Sidheswari Dabi v. Abhayeswari Dabi', 15 Cal 818 (Z13); 'Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das', AIR 1925 Lah 349 (Z14); - 'Bhupendra Nath v. Manohar Mukerjee', AIR 1924 Cal 456 (Z15).

- (2) *The Court should not appoint a receiver except upon proof by the plaintiff that prima facie; he has very excellent chance of succeeding in the S. suit. - 'Dhumi v. Nawab Sajjad Ali Khan', AIR 1923 Lah 623 (Z16); - 'Firm of Raghubir Singh Jaswant v. Narinjan Singh', AIR 1923 Lah 48 (Z17); - 'Siaram Das v. Mohabir Das', 27 Cal 279 (Z18); - 'Muhammad Kasim v. Nagaraja Moopnar', AIR 1928 Mad 813 (Z19); - 'Banwarilal Chowdhury v. Motilal', AIR 1922 Pat 493 (Z20).*
- (3) *Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on*

possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. - 'Manghanmal Tarachand v. Mikanbai', AIR 1933 Sind 231 (Z21); - 'Bidurramji v. Keshoramji', AIR 1939 Oudh 61 (Z22); - 'Sheoambar Ban v. Mohan Ban', AIR 1941 Oudh 328 (Z23).

- (4) *An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less 'in medio' is sufficient to vest a Court with jurisdiction to appoint a receiver. - 'Nilambar Das v. Mabal Behari', AIR 1927 Pat 220 (Z24); - 'Alkama Bibi v. Syed Istak Hussain', AIR 1925 Cal 970 (Z25); - 'Mathuria Debya v. Shibdayal Singh', 14 Cal WN 252 (Z26); - 'Bhubaneswar Prasad v. Rajeshwar Prasad', AIR 1948 Pat 195 (Z27). Otherwise a receiver should not be appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.*

- (5) *The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disintitiled himself to the equitable relief by laches, delay, acquiescence etc."*

Applying the above test, he submitted that this Court could not have appointed a Court Receiver, since the same would have the effect of dispossessing the Appellant from possession of the premises. He then submitted that the *panch sadachar* test had been followed by this Court in the following judgements ***Ravindra Kumar Agarwal vs. Ashok Kumar Agarwal and Others***² and ***Mahendra Mangruram Gupta and Anr. vs. Rajdai Nandlal Shaw and Others***³.

8. He then invited our attention to the Plaint in Suit No. 695 of 2012 as also to Notice of Motion No. 302 of 2013 and pointed out that Respondent No. 1 had not pleaded any case to show how the said premises was in any danger, much less any grave and imminent danger so as to warrant the appointment of

² 2005 SCC OnLine BOM 1839

³ Unreported Judgment dated 15th June 2022 of this Court in Appeal No.83 of 2020

a Court Receiver. He pointed out that only case pleaded in the Complaint and Notice of Motion for appointment of a Court Receiver was that Respondent No. 1 apprehended that the Appellant was likely to create third-party interest in the said premises. He submitted that such an apprehension would be taken care of by an order of injunction and did not warrant the appointment of a Court Receiver as laid down in the case ***T. Krishnaswamy Chetty*** (supra). He pointed out that therefore the Impugned Order clearly fall foul of the *panch sadachar* test.

9. Mr. Anturkar then submitted that the title of Respondent No. 1 (i.e. Labh Singh - the Plaintiff in Suit No. 695 of 2012) was itself under a cloud and therefore, the question of appointing a Court Receiver at the instance of Respondent No. 1 would not arise. In support of his contention that the title of Respondent No. 1 was suspect, he adverted to the following, (a) that Respondent No. 1 had not produced any registered agreement basis which either Respondent No. 1 or M/s Sahib Enterprises ("the said firm") had title in respect of the said

building and/or how the same became an asset of the said firm (b) that the Appellant had been informed by the Registrar of Firms, that the record of the Registrar of Firms did not reflect that any firm with the name '*M/s Sahib Enterprises*' existed. (c) that though Respondent No.1 claimed that said building been given to the said firm in the year 1978, in the year 1985, a Written Statement was filed by one Ranjit Singh (who was Defendant No. 1 in R.A.D. Suit No. 2385 of 1983) in which the Company i.e. Sahib Dittamal & Sons Pvt. Ltd. claimed to be the landlord of said building (d) that the only document on the basis of which title to the said building was claimed by Respondent No. 1 (Labh Singh) was a mutation entry in Property Card (f) though the Consent Terms entered into in Suit No. 1498 of 1997 recorded that all the documents relating to title of said building were lost and/or misplaced, no police complaint or paper publication was made by Respondent No.1 (Labh Singh) in respect of the same. Basis this he submitted that the title of Respondent No. 1 to the said building was clearly under a cloud and thus the Consent Decree was a nullity and had been

obtained by fraud. He placed reliance upon the judgment of Hon'ble Supreme Court in case of ***S.P. Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by LRs***⁴ to submit that, such a fraudulent decree could be challenged in even collateral proceedings.

10. Mr. Anturkar then submitted that another aspect which the Learned Judge had failed to properly construe was the fact that the said building was not the subject matter of Suit No. 1498 of 1997. He submitted that the title of Respondent No. 1 to the said building was created for the first time only by virtue of the Consent Decree and it was thus that the Consent Decree would necessarily have to be registered as per the provisions of section 17(2)(vi) of the Indian Registration Act, 1908 ("**Registration Act**").

11. Mr. Anturkar submitted that in order to determine what the subject matter of the Suit was, one only had to see the Complaint and nothing more. He then invited our attention to the

4 (1994) 1 SCC 1

Plaint and pointed out therefrom that (a) the same bore no reference to the said building (b) the Suit was filed for a declaration that a Family Arrangement dated 15th April 1994 was void and (c) paragraph 10 of the Family Arrangement dated 15th April 1994 infact specifically provided that assets owned by the said Firm were outside the purview of the said Family Arrangement. Basis this he submitted that it was clear that said building was not part of the subject matter of Suit No. 1498 of 1997 and a right in favour of one Sardarni Surjit Kaur (Original Plaintiff No.1 in Suit 1498 of 1997) through whom Respondent No. 1 was claiming title, was created for the first time vide the Consent Terms. Mr. Anturkar then took pains to point out that '*subject matter of the suit*' and '*subject matter of the consent terms*' were two entirely different things and since the rights of Sardarni Surjit Kaur had been created for the first time under the said Consent Terms basis which the Consent Decree was passed, the same would have to be registered. In support of his contention, he placed reliance upon the following judgements, ***Ratan Lal Sharma Vs. Purushottam Harit⁵, Bhoop Singh***

5 (1974) 1 SCC 671

Vs. Ram Singh Major and Others⁶ and State of Kerala and Other Vs V.D. Vincent⁷

12. Mr. Anturkar then submitted that it was almost elementary that in a Civil Suit where the appointment of a Court Receiver was sought for, it was only the Plaintiff's title that had to be considered and not the Defendant's title. In support of his contention, he placed reliance upon the judgements in the case of ***Brahma Nand Puri vs. Neki Puri⁸, Smriti Debbarama vs. Prabha Ranjan Debbarma⁹*** and ***Anathula Sudhakar vs. P.Buchi Reddy (Dead) by Lrs. & others¹⁰***. He then invited our attention to paragraph 26 of the Impugned Order to point out that the Learned Judge had gravely erred and adopted an incorrect approach by considering the title of the Appellant (who was the Defendant in Suit No. 695 of 2012) and basis which the Learned Judge had passed the Impugned Order. He submitted that it was this approach which was completely flawed and

6 (1995) 5 SCC 709

7 2018 SCC OnLine KER 23262

8 (1965) 2 SCR 233

9 2023 SCC OnLine SC 9

10 (2008) 4 SCC 594

contrary to settled law and thus was liable to be interfered with in Appeal. He then pointed out that Respondent No. 1 had in Suit No. 695 of 2012 not even sought a declaration of title but had only sought eviction of the Appellant and Respondent Nos. 2 (Kurian Thomas) and Respondent No. 3 (Mathew) from the said premises. Given these facts he submitted, the Impugned Order was completely unsustainable and was required to be set aside.

13. Mr. Anturkar then submitted that merely because the Learned Judge had in the Impugned Order afforded an opportunity to the Appellant and Respondent No. 3 (Mathew) to bid against each other in order to determine which of them should be appointed as the agent of the Court Receiver, could never be construed as being just and convenient, since the very basis for appointment of a Court Receiver did not exist in the first place. He submitted that such a direction infact militated against 'just and convenient' since it ensured that the party who had the greater financial capacity would be appointed as the agent of the Court Receiver. This he submitted could never be

construed as being just and convenient and was completely contrary to the spirit and intent of Order XL Rule 1 of the CPC.

14. Mr. Anturkar then without prejudice to the above contention, submitted that Order 40, Rule 1, sub rule 2 of the CPC, clearly provided that the Court could not remove from the possession of property any person, whom any party to the Suit did not have a present right so to remove. In support of his contention, he placed reliance upon the judgements in the case of ***Seth Hiralal Patni Vs. Seth Loonkaran Sethiya & Ors***¹¹, ***Anandi Lal Vs. Ram Sarup***¹², ***B.D.A. LTD. Bombay Vs. Central Bank of India***¹³, ***Mary & Others Vs. Biju P. Sebastian***¹⁴, ***State Bank of India vs. Trade and Paper and allied products***¹⁵ and ***Industrial Credit and Investment vs. Karnataka Ball Bearings***¹⁶. Mr. Anturkar pointed out that this aspect had been completely ignored by the Learned Judge. Mr. Anturkar pointed out that since the title of Respondent No. 1 was

11 (1962) 1 SCR 868

12 AIR 1936 Allahabad 495

13 1995(1) Mh.L.J. 91

14 2010 SCC OnLine KER 4836

15 1995 (2) Mh.L.J.81

16 (1999) 7 SCC 488

under a cloud and disputed by the Appellant, Respondent No. 1 could not be said to have any "**present**" right qua the said building and consequently the said premises.

15. Mr. Anturkar submitted that the Learned Judge had also fallen in error by failing to appreciate the difference between 'dissolution of a partnership firm' and the 'retirement of partner from a partnership firm'. He submitted that in the present case, it was Respondent No.1's own case that the said building had been given to Sardarni Surjit Kaur towards her share in the said firm upon her retirement. He therefore submitted that the principles which applied to retirement would therefore not apply to the facts of the present case. In support of his contention that retirement and dissolution were distinct, he placed reliance upon the judgements of the Hon'ble Supreme Court in the case of ***Pamuru Vishnu Vinodh Reddy vs. Chillakuru Chandrasekhara Reddy***¹⁷ and ***Guru Nanak Industries and Another vs. Amar Singh***¹⁸.

17 (2003) 3 SCC 445

18 (2021) 14 SCC 672

16. It was thus that Mr. Anturkar submitted that the Impugned Order was therefore clearly unsustainable and was required to be set aside.

Submissions of Mr. Khandeparkar on behalf of Respondent No.1

17. At the outset, Mr. Khandeparkar submitted that the Appellant's contention that in the present case, the appointment of a Court Receiver was not just and convenient or that Respondent No. 1 did not have title to the said building/premises was entirely untenable. He submitted that the rights of Respondent No. 1 flowed from a Consent Decree of this Court, which decree was valid and subsisting and had not been challenged by anyone. He submitted that the contention of lack of registration of the said decree was equally untenable since the Consent Decree was a declaratory decree which did not, in law have to be registered since the same merely declared the rights of the Parties as they existed on that date i.e. 2nd May, 2005.

18. He pointed out that the Consent Decree had been passed in terms of the Consent Terms which were entered into between the members of the Singh family as a comprehensive family settlement, which included entities such as the said building and the said firm. He pointed out that this comprehensive family settlement had been accepted and acted upon without demur or protest by all parties to the same. He thus submitted that the Appellant's contention that Respondent No. 1 did not have title to the said building/premises and/or did not have a present right to sue was plainly devoid of any merit. He submitted that this was purely an argument of desperation given the fact that the Appellant was a rank trespasser, who did not have any case on merit to explain the basis on which the Appellant was in possession of the said premises. In support of his contention that it would not be open to the Appellant, who was a rank trespasser, to now mount a collateral attack to the decree in the manner in which the Appellant was seeking to do. In support of his contention, he placed relied upon a judgment of

Hon'ble Supreme Court in ***Board of trustees of Port Kandla Vs. Hargovind Jasraj and Others.***¹⁹

19. Mr. Khandeparkar then pointed out that the Appellant's contention that the said building did not form part of Suit No. 1498 of 1997 and that the right of Sardarni Surjit Kaur (from whom Respondent No. 1 derived title) was created for the first time by the Consent Decree was also plainly misconceived. In support of his contention that the said building formed part of Suit No.1498 of 1997, he pointed out that the said Suit was filed seeking cancellation of the Deed of Family Settlement which (a) specifically made a reference to the said firm i.e. M/s. Sahib Enterprises (b) confirmed the share of Sardarni Surjit Kaur (Plaintiff No.1 in Suit 1498 of 1997) in the said firm (c) that clauses 10 and 13 of Family Arrangement contained an agreement in terms of Section 42 of the Indian Partnership Act in respect of the said firm (d) that the Consent Terms were entered into as a comprehensive settlement between all the

¹⁹ (2013) 3 SCC 182

members of the Singh family. Basis this, he submitted that the said Firm and its assets were very much part of the Deed of Family Arrangement and Suit No.1498 of 1997.

20. He then took pains to point out that the portion of Clause 10 which recorded that the assets held by the said Firm were outside the purview of the Family Arrangement was infact a protection granted to Sardarni Surjit Kaur (the Plaintiff in Suit 1498 of 1997) from whom Respondent No. 1 derived title and not an exclusion in the manner suggested by the Appellant. He pointed out that upon reading clause 10 of the said Family Arrangement it was *ex-facie* clear that the same infact affirmed the 13% share of Sardarni Surjit Kaur (Plaintiff No.1 in Suit 1498 of 1997) but had merely couched the protection in a negative form.

21. Basis the above he submitted that the said firm and its assets were very much part of the Family Arrangement and

clauses 10 and 13 were only meant to protect the share of Sardarni Surjit Kaur, in the assets of the firm and/or her interest and nothing else. It was thus, he submitted that the question of registration of the said Consent Decree did not arise, since the said firm and its assets were very much a part of the subject matter of Suit No. 1498 of 1997. He submitted that the said building was only the share of Sardarni Surjit Kaur in the said firm, which was given to her on her retirement as per the comprehensive settlement arrived at in the said Consent Terms. He invited our attention to paragraph 17 of the Impugned Order and pointed out that the Learned Judge had in great detail dealt with this aspect therein.

22. Mr. Khandeparkar then submitted that the contention of the Appellant that the effect of dissolution of a firm and retirement of a partner are distinct was wholly untenable. He then placed reliance upon a judgement of the Hon'ble Supreme Court in the case of ***S.V. Chandra Pandian and others Vs. S.***

V. Sivalinga Nadar and others²⁰ to submit that when a property was allotted to a partner in proportion to his share in the profits of the firm, there was no partition and/or transfer taking place nor was there any extinguishment of interest as contemplated under Section 17 of the Registration Act. Mr. Khandeparkar then placed reliance upon a Division Bench judgment of this Court in the case of **Commissioner of Income-Tax, Bombay City-III Vs. Patel Brothers**²¹ to submit that that the principle as contemplated on dissolution of a partnership firm would equally apply even in the case of retirement of partner. He then invited our attention to Clause 8 (b) of the Consent term to submit that the accounts of the said firm were drawn up and accepted by all the partners of the said firm. Pursuant to this the said building was appropriated towards Original Plaintiffs Nos. 1 and 2 in Suit 1498 of 1997 upon their retirement, as their share in said firm. It was thus he submitted that the same was to be necessarily be construed as movable

20 (1993) 1 SCC 589

21 1982 SCC OnLine Bom 393

property which would not require registration under Section 17 of the Registration Act.

23. Mr. Khandeparkar then without prejudice to the aforesaid, submitted that the Appellant's contention that the said building belonged to and was owned by the said company i.e. Sahib Dittamal & Sons Pvt. Ltd. and was never an asset of the said firm was also entirely misconceived. He pointed out that the said company was a private limited company whose shareholders were the members of the Singh family. He pointed out that this fact was specifically mentioned in the Family Arrangement Deed. He submitted that the members of the Singh family who were the directors/shareholders of the said company were all parties to the Suit No. 1498 of 1997 and that they were also partners of the said firm. He pointed out that the Consent Terms which had been entered into was a broad and all-encompassing family settlement which settled all the disputes and differences between the members of the Singh family as also all entities owned by them which included the said firm and

its assets. He placed reliance upon a judgement of the Hon'ble Supreme Court in the case of ***Khushiram & Others vs Nawal Ram and Others***²², to submit that the Hon'ble Supreme Court had held that when construing a family settlement, Courts must take a liberal and broad view and always try to uphold and maintain such settlements arrived at between close family members. He reiterated that no dispute had ever been raised by any of the shareholders/directors of the said company and/or any of the partners of the said partnership firm in respect of the Consent Terms.

24. Mr. Khandeparkar, then in dealing with the Appellant's contention that in the facts of the present case it was not just and convenient to appoint a Court Receiver, invited our attention to the following, viz.

- i. That the MOU dated 28th November 2008, basis which the Appellant claimed that "*all the legal rights*" of Respondent No. 2 (Kurian Thomas) had been

²² (2021) 16 SCC 279

transferred to the Appellant was (a) unstamped and (b) the payment stated to be made thereunder was recorded as being made in cash.

- ii. That the MOU was not entered into with Respondent No. 2 (Kurian Thomas) but was entered into with one Arvind Rattan, who claimed to be the Power of Attorney (POA) holder of one Manohar Dwarkadas Rattan who in turn claimed to be the POA holder of Respondent No. 2 (Kurian Thomas).
- iii. That the MOU itself recorded that the Appellant would not be entitled to transfer the said premises to her name until such time as payment of the consideration amount mentioned in the MOU was made.
- iv. That RAD Suit No. 2385 of 1983 by Respondent No. 2 (Kurian Thomas) in which he sought to be declared as

a tenant in respect of the said premises, was dismissed vide an order dated 7th March 2000.

- v. That the only evidence of payment by the Appellant was recorded in a purported declaration which was dated 22nd July 2011 i.e. 3 years after the MOU was entered into and such payment was made to Arvind Rattan (the POA of the Manohar Dwarkadas Rattan) and not Respondent No. 2 (Kurian Thomas).

25. From the aforesaid facts as also the enunciation of law, Mr. Khandeparkar submitted that it was *ex facie* apparent that the Appellant was not in lawful possession of the said premises and did not have even the remotest a semblance of legal right to the said premises and thus it was wholly just and equitable that the Court Receiver was appointed. Conversely, he reiterated that the title of Respondent No. 1 was basis a declaratory decree of this Court, which had not been disputed much less assailed by any of the parties to the same. It was in these facts, that he submitted that the Learned Judge had

arrived at the *prima facie* finding that the Appellant was a rank trespasser. He submitted that there was absolutely no infirmity with the said finding whatsoever.

26. Mr. Khandeparkar, then submitted that the reliance placed by the Appellant upon the judgement of the Madras High Court in the case of ***T. Krishnaswamy Chetty*** (supra) was entirely misplaced and wholly inapplicable in the facts of the present case. He pointed out from the judgement of this Court in the case of ***Ravindra Kumar Agarwal*** (supra) relied upon by the Appellant that the Division Bench of this Court had infact in the said case *inter alia* held that if possession of property was taken by fraud and the property was exposed to danger or loss the Court could appoint a Court Receiver. Similarly he also placed reliance upon a judgement passed by this Division Bench in the case of ***Rajaram Chavan Real Estate Pvt. Ltd. Vs. Mohammed Anwar Kutubuddin Siddiqui & Ors.***²³ to submit that this Division Bench had also while considering the judgement of the Madras High Court in the case of ***T.***

23 2023 SCC OnLine Bom. 1931

Krishnaswamy Chetty (supra) held that the said judgement would be of no assistance to a person who was not in lawful possession of the property in question and that in such a fact scenario, the Court would be fully justified in appointing a Court Receiver. He submitted that in the facts of the present case, the Appellant being a rank trespasser, cannot be said to be in lawful possession and thus the appointment of Court Receiver was entirely justified.

27. He then without prejudice to the aforesaid submissions, placed reliance upon a judgement of this Hon'ble Court in the case **Mulji Umershi Shah Vs. Paradisia Builders Pvt. Ltd. & Ors.**²⁴ and pointed out therefrom that a Court Receiver could be appointed not only under the provisions of Order XL Rule 1 of the CPC but also under Section 94 of the CPC. He submitted that this Court had in the case of **Mulji Umershi Shah** (supra) held that the Court was empowered to appoint a Court Receiver even where there was no application for appointment of a Court Receiver, so that possession may be

24 AIR 1998 Bom. 87

handed over to a party who was *prima facie* entitled to possession but had been deprived of such possession by some unlawful conduct or illegal act.

28. Mr. Khandeparkar then submitted that the Appellant's contention that Respondent No.1 did not have a present right to sue and the Appellant's reliance upon Order XL Rule 1(2) of the CPC was entirely misplaced. He pointed out from the judgement of the Hon'ble Supreme Court in the case of **Seth Hiralal Patni** (supra) that Order XL Rule 1(2) was applicable only in the context of a person who was not a party to the Suit which was not so in the present case. He submitted that the Appellant being a party to the Suit, the provisions of Order 40 Rule 1(2) would have absolutely no application. He placed reliance upon the judgment of a Division Bench of this Court in the case of **Damodar Moreshwar Phadke & Ors. Vs. Bai Radhabai Bhratar Damodar Raoji Ranade**²⁵ and pointed out that this Court had expressly held that the judgment of the Allahabad

25 ILR 1939 Bom. 82-86

High Court in the case of **Anandi Lal** (supra) did not lay down the correct proposition of law.

29. Mr. Khandeparkar submitted that the present Appeal was admittedly from an interlocutory order and that any challenge to the same would have to be tested on the basis of the law laid down by the Hon'ble Supreme Court in the case of **Wander Ltd. vs. Antox India Pvt. Ltd.**²⁶ He submitted that it was not open to the Appellate Court to interfere with the exercise of discretion by the Learned Judge and substitute its own view except in cases where it is established that the Learned Judge had exercised such discretion arbitrarily, capriciously, or perversely or where the Court had ignored settled principles of law. He reiterated that the Impugned Order was a detailed and well reasoned order in which the Learned Judge had exercised his discretion judiciously and thus was not liable to be interfered with in Appeal. In the present case, he submitted that what the Appellant was infact calling upon this Court to do was to re-appreciate the evidence/material on record

²⁶ 1990 (Supp) SCC 727

and arrive at a conclusion different from the conclusion reached by the Learned Judge. He submitted that this was clearly beyond what had been prescribed by the Hon'ble Supreme Court in the case of ***Wander Ltd.*** (supra). Basis this he submitted that there was no ground for interference with the Impugned Order and the Appeals of the Appellant ought to be dismissed.

Submissions of Mr. Khandeparkar in Appeal (L) No. 138 of 2020

30. Mr. Khandeparkar submitted that Appeal (being Appeal (L) No 138 of 2020) had been filed by Respondent No.1 on the limited ground that the Appellant in Appeal No.35 of 2020 must be directed to pay royalty not only from the date on which the agency agreement is executed as contained in paragraph (vi) of the Impugned Order but must be made to do so from 19th December 2011 i.e. the date on which the Court Receiver first came to be appointed. He submitted that this was so since the Appellant was a rank trespasser and therefore royalty must

necessarily be paid from the first date. He submitted that this quantum of royalty would stand deposited with the Court Receiver and would be for the benefit of the party who ultimately succeeded in the Suit. He submitted that if the Appellant was not directed to pay the royalty, the same would give an impetus to those who take the law into their own hands and occupy the premises in the manner that the Appellant has done. Basis this, he submitted that the Appeal of Respondent No.1 be allowed.

31. We have heard Learned Counsel at length, as also considered the case law cited by both sides. However, before we proceed to deal the rival contentions, we have to be alive to the following, viz.

- i. That these Appeals are all from interlocutory orders which have been passed by the Learned Judge in the exercise of his discretionary jurisdiction. Hence, as laid down by the Hon'ble Supreme Court in the case of **Wander Ltd.** (supra), it would not be open to us

to either substitute our discretion with the discretion exercised by the Learned Judge, unless it is shown that the exercise of such discretion at the first instance was arbitrary, capricious, perverse or that the Learned Judge had ignored the well settled principles of law. It is also not open to us to reassess the material based on which the Learned Judge has arrived at his findings or for us to re-appreciate such material unless it is shown to us that it was not reasonably possible to reach the conclusion which the Learned Judge had arrived at. Thus, what we have to examine is whether the Learned Judge has acted reasonably and in a judicious manner in the exercise of his discretion in passing the Impugned Order.

- ii. That as held by the Hon'ble Supreme Court in the case of ***Monsanto Technology LIC vs. Nuziveedu Seeds Ltd.***²⁷ the Appeal Court must not "*usurp the*

²⁷ (2019) 3 SCC 381

jurisdiction of the Single Judge", and must confine itself to an adjudication as to whether the Impugned Order was or was not justified in the facts and circumstances of the specific case in which the same was rendered. Where there are complicated questions of fact and law, these cannot be dealt with in summary adjudication, but must be examined on evidence led in the Suit.

- iii. That, as also been held by the Hon'ble Supreme Court in the case of ***Alka Gupta vs Narendra Kumar Gupta***²⁸, it is not open to Court of the first instance to decide questions of fact and render a judgement based thereon without evidence tested by cross examination.

28 (2010) 10 SCC 341

iv. That, as held by this Court in the case of ***Siddhi Umesh Mehta vs Hriday Niraj Mehta & Ors***²⁹, the usual determinants for any interim application must be borne in mind, namely, whether the Plaintiff has made out a *prima facie* case, the question of balance of convenience and where it lies and to whom the greater and more irreparable injury would be likely to be caused. These *prima facie* findings are tentative, so as to preserve the status quo until the matter is decided finally.

32. Keeping the above in mind, we shall now proceed to deal with the submissions advanced.

A. At the outset we must note three factors which to our minds are crucial in deciding these Appeals; (i) that the Appellant stood appointed as the agent of Court Receiver without payment of royalty vide order dated 19th December 2011; (ii) neither the Appellant nor

²⁹ Unreported Judgment of this Court dated 12th April 2022 in Appeal No.64 of 2022

Respondent No.1 and Respondent No.3 have challenged this order; and (iii) the Appellant has not either filed any independent proceedings basis which the Appellant claims title to and/or entitlement to use, occupation and possession of the said premises nor has the Appellant even attempted to demonstrate what right, title and interest the Appellant has in the said premises, even qua occupation of the same. The Appellant has merely sought to assail the title of Respondent No.1.

- B. The main contention of the Appellant to assail the Impugned Order was that the same fell foul of the *panch sadachar* test as laid down by the Madras High Court in the case of ***T Krishnaswammy Chetty*** (supra) and that an order of injunction under Order XXXIX of the CPC could just as well have sufficed in the facts of the present case. We are however unable to agree with this contention for the following reasons :-

- (i) The facts in the case of ***T Krishnaswammy Chetty*** (supra) are materially different from the facts of the present case. It is crucial to note that in the case of ***T Krishnaswammy Chetty*** (supra) the Defendant therein who was in possession of the premises in question claimed entitlement to the same on the basis of two decrees, namely '*mortgage decree*' and '*rent decree*'. In the present case, it is quite the converse. Respondent No.1 (Labh Singh) seeks eviction of the Appellant from the said premises on the basis that the Appellant is a rank trespasser and does not have a semblance of either title in respect of the said premises and/or right to be in use and occupation of the same. Respondent No.1 (Labh Singh), in the present case, claims possession of the said premises and has based his right, title and/or entitlement to the same on the basis of a Consent Decree of this Court which is admittedly today valid and subsisting.

- (ii) Additionally, what is imperative to note in the facts of the present case is that, despite the finding of the Learned Judge that the Appellant is a rank trespasser, not a single submission was advanced by the Appellant to demonstrate as to how this finding was in any manner erroneous, much less arbitrary, perverse or capricious.
- (iii) The only submission made on behalf of the Appellant was that the Court was required to only consider the title of Respondent No. 1 (Plaintiff in Suit No.695 of 2012) which was itself under a cloud and thus a Court Receiver could never have been appointed at the instance of Respondent No.1.

Hence, what we find in the present case is that the Appellant is seeking to use the *panch sadachar* test as a shield to protect against what the Learned Judge has concluded is patently unauthorized occupation i.e. rank trespasser. We must note that

this Court has in the case of **Rajaram Chavan Real Estate Pvt. Ltd.**(supra) held that the *panch sadachar* test would not be available to someone whose occupation was unlawful. We find that the same would squarely apply in the facts of the present case as well. Thus, we find that the judgment of the Madras High Court in the case of **T Krishnaswammy Chetty** (supra) is wholly inapplicable to the facts of the present case.

- C. Equally we find that the Appellant's contention that an order of injunction would have sufficed in the facts of the present case is also entirely untenable. A careful reading of the judgement in the case of **T Krishnaswammy Chetty** (supra) makes clear that the *panch sadachar* itself expressly states that "*if the property is exposed to danger and loss and the person in possession has obtained it through fraud or force the Court will interpose by receiver for the security of the property*". It cannot be disputed that there is inherent

danger and likelihood of loss to property when in the hands of a trespasser. Therefore, in such a fact scenario for the Appellant to contend that only an order of injunction would suffice is plainly untenable. Hence, we find the Appellant's reliance upon the judgments in ***T Krishnaswammy Chetty*** (supra), ***B.D.A. LTD. Bombay*** (supra), ***Trade and Paper and allied products*** (supra), ***Karnataka Ball Bearings*** (Supra) ***Mary & Others*** (supra), ***Ravindra Kumar Agarwal*** (supra) and ***Mahendra Mangruram Gupta*** (supra) to be equally inapplicable to the facts of the present case.

- D. Insofar as the Appellant's contention that the title of Respondent No.1 (Labh Singh) was under a cloud and that the Learned Judge had gravely erred in taking into consideration the title of the Appellant is also entirely untenable. We must note that it was only after the Learned Judge had satisfied himself that Respondent No.1 was claiming under a valid decree of this Court, and thus had *prima facie* title, gone on to consider the

Defendant's title and/or entitlement to the said premises. We find that there can be nothing wrong with such an approach taken by the Learned Judge since the Learned Judge in doing so was only considering the merit of the rival cases in order to determine the balance of convenience. We find that the Learned Judge has done so solely in order to determine what was just and convenient in the facts of the present case. As already noted above, Learned Judge was not required to, when deciding an interlocutory application, conduct a mini trial, but was required to arrive at a subjective satisfaction based on the material before him in order to determine as to whether the appointment of the Court Receiver was just and convenient. We find that this is precisely what the Learned Judge has done. As already noted above, the Appellant did not challenge the order dated 19th December 2011 appointing a Court Receiver and thus was never really aggrieved by the appointment of the Court Receiver *per-se*. Only challenge now is to

the fact that the Appellant and/or Respondent No.3 will have to pay royalty as an agent of the Court Receiver.

- E. Thus, given the fact that (i) Respondent No. 1 has claimed title on the basis of a valid and subsisting decree of this Court (ii) that the Appellant has admittedly not demonstrated any basis to establish either title to and/or entitlement to be in possession of the said premises (iii) conversely, both Respondent No. 1 (Labh Singh) and Respondent No. 3 (Mathew) have filed independent Suits seeking to assert their respective rights qua the said premises (iv) that Respondent No. 2 (Kurian Thomas) through whom the Appellant claims to have derived title/possession of the said premises, himself claimed only as a tenant of the said premises which claim was dismissed in the year 2000 i.e. 8 years before the aforesaid MOU was even entered into, We find the Impugned Order to be entirely 'just and convenient'. Therefore, judgements relied by the Appellant in the case of ***Brahma Nand Puri*** (supra),

Smriti Debbarama (supra) and ***Anathula Sudhakar*** (supra) in support of the contention that Learned Judge failed to consider the *prima facie* title of the Respondent No.1 would be of no assistance.

- F. Equally, we find the Appellant's reliance upon Order XL Rule 1(2) of the CPC to be entirely misplaced. Firstly, as already dealt with above, the claim of Respondent No. 1 is based on a valid and subsisting decree of this Court, basis which Respondent No.1 has a *prima facie* established right to sue. Secondly, and crucially the Impugned Order in fact does not remove the Appellant from the said premises, but infact permits the Appellant to bid against Respondent No. 3 (Mathew) in order to determine who will be appointed as agent of the Court Receiver. The order does not remove the Appellant and put Respondent No.1 in possession of the said premises. Thus, the Appellant may very succeed in being appointed as an agent of the Court Receiver and thereby continue to be in possession of the Suit property. Hence,

the contention of the Appellant that the Impugned Order has the effect of removing the Appellant from the said premises is entirely premature and infact untenable. Hence judgements relied by Mr. Anturkar in case of **Seth Hiralal Patni** (supra) and **Anandi Lal** (supra) would be of no assistance to the Appellant.

- G. We also find the Appellant's contention that the Consent Decree was obtained by fraud and thus cannot be relied upon to be wholly untenable. Firstly, this is fact which would have to be determined after trial and more importantly we find that not a single party to a Consent Terms basis which the Consent Decree was passed has so much as questioned the same let alone alleged fraud. The only challenge to this Consent Decree is by the Appellant who was not even a party to same. Equally we find that the Appellant's contention that the Consent Decree was required to be registered is also untenable and has been dealt with by the Learned Judge in great detail in paragraphs 20 to 22 of the Impugned Order.

We have perused the said paragraphs and find absolutely no infirmity in the conclusions reached therein by the Learned Judge.

- H. Also, the Appellant's contention that the title of Respondent No.1 was under a cloud since there is nothing to show how the said firm became the owner of the said building is also untenable. As already noted above, the Consent Terms clearly provided that the said building was apportioned to the share of late Sardarni Surjit Kaur on her retirement as a partner of the said firm. Hence in view of the judgment of this Court in **Patel Brothers** (supra) and judgment of Hon'ble Supreme Court in **S.V. Chandra Pandian** (supra) the said building being treated as a share of retiring partner would not have to be registered. We find that the Learned Judge has in great detail in paragraphs 23 to 25 of the Impugned Order dealt with this aspect. Thus, we find that there is no reason for us to at this stage interfere with the said finding.

34. In so far as Appeal (L) No.138 of 2020 is concerned, we find equally that the same is devoid of any merit and deserves to be dismissed since the Appellant therein i.e. Labh Singh Daya Singh had, at no point of time, challenged the order dated 19th December 2011 by which the Appellant (Zainab Shaikh) was appointed as agent of the Court Receiver without payment of royalty. Thus, we find no reason to now direct the Appellant (Zainab Shaikh) to pay the royalty from 19th December 2011 especially given the fact that there has been no challenge to the said order.

35. In view of above, we find that all the three captioned Appeals i.e. Appeal No.34 of 2020, Appeal No. 35 of 2020 and Appeal (L) No.138 of 2020 deserve to be dismissed with no order as to costs.

36. In view of the dismissal of the Appeals, the captioned Interim Applications do not survive and the same are accordingly disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)