IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Before:

The Hon'ble Justice Arijit Banerjee
And
The Hon'ble Justice Om Narayan Rai

APOT 94 of 2025
With
IA No: GA 1 of 2025

Srijan Realty Pvt. LTd. & Ors.

Vs.
John Augustine & Anr.

For the Appellants	: Mr. S. N. Mitra, Sr. Adv. Mr. Suman Kr. Dutt, Sr. Adv. Mr. Siddhartha Banerjee, Adv. Mr. Rahul Karmakar, Adv. Mr. Abhisek Baran Das, Adv.
For the Plaintiff/Petitioner	: Mr. Jayanta Kr. Mitra, Sr. Adv. Mr. S.N. Mookherji, Sr. Adv Mr. Ranjan Bachhawat, Sr. Adv Mr. Rudraman Bhattacharyya, Sr. Adv. Ms. Amrita Panja Moulick, Adv. Mr. Saptarshi Banerjee, Adv. Mr. Suryaneel Das, Adv. Mr. Akash Munshi, Adv. Mr. Siddharth Banerjee, Adv. Ms. Shivangi Agarwal, Adv.
For the Defendant Nos. 1 & 2 / Proforma Respondent Nos. 3 & 4	: Mr. Joydeep Kar, Sr. Adv. Mr. Pijush Roy, Adv. Mr. Shounak Mukhopadhyay, Adv. Ms. Shrayashee Das, Adv. Mr. Rohan Kumar Thakur, Adv. Mr. Tridibesh Dasgupta, Adv.
Hearing Concluded on	: 02.05.2025
Judgment on	: 14.05.2025

Om Narayan Rai, J.:-

1. Although initially the application for stay being GA 1 of 2025 was slated to be heard, yet since all the papers that were there before the learned Single Judge are there before us, by consent of the parties we have heard the appeal itself.

2. The defendant nos. 3, 5 and 6 in the suit being CS 35 of 2025 have preferred the instant appeal laying challenge to a judgment and order dated March 20, 2025, passed by a learned Single Judge of this Court in GA 1 of 2025 arising out of CS 35 of 2025, thereby granting an *ex parte* ad interim order of injunction restraining the defendants in the suit (i.e. the appellants and the proforma respondents) *inter alia* from carrying on any further construction at or alienating or transferring or disposing of the suit property to any third party.

3. Since the appeal is directed against an *ex parte* ad interim order of injunction passed in a suit, in view of the law as it stands today, the Court should, at this stage, proceed on the assumption that all the averments made in the plaint and in the application for injunction are true. The case run in the plaint therefore needs to be noticed first. Briefly summed up, the plaint case is as follows:-

   (a) The plaintiff no. 1 is the Metropolitan Bishop of India, Pakistan, Burma and Ceylon and the Chairman of Indian Church Trustees. The plaintiff no. 2 namely the Indian Church Trustees has been stated to be a body incorporated by the Royal Charter dated June 11, 1929 and published in the Gazette of India on July 20, 1929 at Shimla under Section 6(1) of the Indian Church Act, 1927. It has been alleged that the plaintiff no. 2 is a body corporate which can sue and be sued in its own name.

   (b) Paragraphs 1 to 11 of the plaint have been devoted to narrating the history of the Church of India in order to project that the properties of Church of India are vested with the plaintiff no. 2 and that the Church of India is in effective control of and has been administering the Church properties.

(c) The plaintiffs have been uninterruptedly enjoying and possessing premises no. 224, Acharya Jagadish Chandra Bose, Kolkata- 700017 lying and situated within the jurisdiction of the Karaya Police Station, Ward No. 69 which forms the subject matter of the suit. The said property is "under the ownership of the Indian Church held through the plaintiff no. 1". The plaintiffs have been regularly paying property tax to the Kolkata Municipal Corporation.

(d) The plaintiff no. 1 who has the power of operation across India and who has been managing several properties across India, has been operating through its Trustees and other office bearers.

(e) In or around September, 2024, the plaintiffs came to learn that the defendant no. 3 was constructing a building at the suit premises and the Indian Church Trustees was shown as the land owner.

(f) The members of the Indian Church Trustees held a meeting on February 22, 2025 and decided to take steps against dissipation of the church property without the concurrence or knowledge of the Church of India. Accordingly the plaintiff no. 1 was authorized through a resolution of even date to take appropriate steps in respect of the suit property *inter alia* by filing appropriate proceedings before competent Courts and authorities.

(g) The members of Indian Church Trustees then engaged lawyers to conduct searches whereupon it was found that a development agreement dated August 7, 2019, had been entered into between the defendant nos. 1 and 2 on the one hand and the defendant no. 3 on the other, whereby the defendant no. 3 had been allowed to construct a building and had been given right to the extent of 47% of the constructed area.

(h) The defendant nos. 1 and 2 are not the Trustees of the Indian Church and in any case the Trustees are not authorized to enter into any agreement with respect to any property of the Church without the permission of the General Council and/or of the Metropolitan.

(i) The joint development agreement dated August 7, 2019 and the power of attorney dated August 18, 2019, executed by the defendant nos. 1 and 2 on behalf of the plaintiff no. 1 in favour of the appellants (defendant nos. 3, 4 and 5) is fraudulent. Particulars of such fraud have been pleaded in paragraph 26 of the plaint. The said joint development agreement dated August 7, 2019 and the power of attorney dated August 18, 2019, are void documents inasmuch as the same have been fraudulently created.

(j) Feeling distressed by the attempts of the defendants in the suit to invade the rights of the plaintiffs in respect of the Church property as aforesaid, the plaintiffs have instituted the suit being CS 35 of 2025 praying *inter alia* for the following reliefs:

(a) Decree for declaration that the Joint Development Agreement dated 7th August, 2019 registered in the Office of the Registrar of Assurances in Book No. I, Volume No. 135, Pages 133 to 136, Being No. 5076, for the year 1960, executed jointly by the Defendant no. 4, being part of Annexure-"E" hereto and the Power of Attorney, has being registered with the Additional District Sub-Registrar, Sealdah, South 24-Parganas in Book No. I, Volume No. 1606 to 2019, Pages 126859 to 126888, Being No. 160603405, for the year 2019, being part of Annexure – "E" hereto is null, void ab initio, of no effect and not binding on the Plaintiffs;

(b) Decree adjudging the Joint Development Agreement dated 7th August, 2019 registered in the Office of the Registrar of Assurances in Book No. I, Volume No. 135, Pages 133 to 136, Being No. 5076, for the year 1960, executed jointly by the Defendant No. 4, being

Annexure – "E" hereto and the Power of Attorney, has been registered with the Additional District Sub-Registrar, Sealdah, South 24-Parganas in Book No. I, Volume No. 1606 to 2019, Pages 126859 to 126888, Being No. 160603405, for the year 2019, being part of Annexure – "E" as void and directing delivery of and cancellation thereof;

(c) *A decree of declaration that the Indian Church is the lawful owner of the suit premises mentioned in Schedule "A" to the plaint;*

(d) *Direction to send a copy of the decree to the Registrar of Assurance, Kolkata for noting on the copy of the said Joint Development Agreement dated 7th August, 2019 registered of Assurances in Book No. I, Volume No. 135, Pages 133 to 136, Being No. 5076, for the year 1960, executed jointly by the Defendant No. 4, being part of Annexure – "E" hereto and the Power of Attorney, has been registered with the Additional District Sub-Registrar, Sealdah, South 24-Parganas in Book No. I, Volume No. 1606 to 2019, Pages 126859 to 126888, Being No. 160603405, for the year 2019, being part of Annexure – "E" contained in his Books for its cancellation;*

(e) *decree for perpetual injunction restraining the Defendants and/or each of them by themselves or through their agents, servants, representatives and/or assigns from acting on the basis, in furtherance or in terms or from giving effect to the impugned Joint Development Agreement dated 7th August, 2019 and the impugned Power of Attorney dated 18th August, 2019, being Annexures – "E" hereto or from deriving from any benefit therefrom in any manner whatsoever in relation to any part of the scheduled Premises, directly or indirectly;*

(f) *decree for perpetual injunction restraining the Defendants and/or each of them by themselves or through their agents, servants,* *representatives and/or assigns from disturbing the Plaintiffs' peaceful possession in respect of the scheduled Premises without any obstruction or interference in any manner whatsoever, directly or indirectly;*

4. Along with the plaint, the plaintiffs have also filed an application for interim reliefs praying *inter alia* for an order restraining the defendants in the suit (i.e. the appellants and the proforma respondents) from carrying on any further construction and from transferring and/or alienating and/or disposing of and/or dealing with and/or creating any third party right, title or interest in the suit property. Insofar as the factual matrix is concerned, the said application is a substantial replica of the plaint.

5. The said application was heard on March 20, 2025, by the learned Single Judge whereupon the learned Single Judge has been pleased to pass an *ex parte* ad interim order of injunction restraining the defendants *inter alia* from carrying on any further construction or alienating or transferring or disposing of the suit property to any third party.

6. It is such *ex parte* ad interim order of injunction passed on March 20, 2025, which has been impugned in the present appeal.

7. Mr. Surojit Nath Mitra, learned Senior Advocate appearing for the appellants (defendant nos. 3, 5 and 6) opened his case by submitting that the suit in question, as would be evident from the pleadings in the plaint and the reliefs prayed for, is a suit for land. Inviting the Court's attention to the schedule appended to the plaint it was submitted that the property which forms the subject matter of the instant suit is admittedly situated within the jurisdiction of Karaya Police Station which is outside the original jurisdiction of this Court. Mr. Mitra invited the attention of this Court to prayer (c) of the plaint and submitted that as decree for declaration of title in respect of the suit property which is situated outside the original jurisdiction of this Court has been sought for, the suit could not have been entertained by the learned

Single Judge and no order of injunction could have been passed inasmuch as this Court lacks territorial jurisdiction in respect of the suit property.

8. As the point raised by Mr. Surojit Nath Mitra *prima facie* appealed to us and a decision on it would have led to an expeditious disposal of the appeal itself, we called upon the principal respondents/plaintiffs to answer the same.

9. Mr. Jayanta Kumar Mitra, learned Senior Advocate appearing for the principal respondents/plaintiffs submitted on instructions that his clients are ready and willing to forego the relief of declaration of title in respect of the suit property sought for vide prayer (c) made in the plaint inasmuch as title is not really an issue in the suit in view of the fact that title of the plaintiff no. 2 as the owner of the suit property stands admitted.

10. Placing reliance on a judgment of the Hon'ble Supreme Court in the case of ***Adcon Electronics Pvt. Ltd. vs. Daulat and Another***[1], it was submitted that a suit would not fall within the category of suit for land if no relief of delivery of possession of the suit property had been claimed. Referring to the various prayers made in the plaint, it was sought to be demonstrated that no relief for delivery of the possession of the suit property had been claimed and it was submitted that the suit in question would therefore not be a suit for land.

11. It was further submitted that the facts of the case had telltale signs of fraud committed by the defendant nos. 1, 2 and 3 for using the Church property for their own gain. Relying on a judgment of the Single Bench of this Court in the case of ***Sm. Parimal Mitra and Others vs. Paresh Chandra Hazra and Others***[2], it was submitted by Mr. Mitra that even if a suit which was otherwise a suit for land was founded on an allegation of fraud, the Court within whose jurisdiction fraud was committed would have jurisdiction to entertain the suit notwithstanding the fact that suit property lay outside the

[1] (2001) 7 SCC 698
[2] AIR 1982 Cal 361

jurisdiction of the said Court. It may be recorded here in this connection that upon considering the judgment of ***Sm. Parimal Mitra***[2] (supra), we put the principal respondents on notice that their contention may require reconsideration in the light of the judgment of the Hon'ble Supreme Court in the case of ***Harshad Chiman Lal Modi v. DLF Universal Ltd. & Anr.***[3]

12. Another judgment of this Court in the case of ***Macneill and Magor Ltd. and Another vs. Mouhsen Ali and Another***[4] was relied on for the proposition that the provisions of Order 7 Rule 10 of the Code of Civil Procedure, 1908 (hereafter "the Code") do not apply to Chartered High Courts and that in case it is found that this Court does not have territorial jurisdiction to try the suit in question, this Court would not have authority to return the plaint under Order 7 Rule 10 of the Code and that the Court would have to exercise its powers under section 24 of the Code to transfer the suit to the Court having jurisdiction.

13. Relying on a judgment of the Hon'ble Supreme Court in the case of ***Committee of Management of Pachaiyappa's Trust vs. Official Trustee of Madras and Another***[5], it was stressed that it was obligatory on the part of the Trustees as well as of the Court to safeguard the interest of the Church. Further, another Single Bench judgment of this Court in the case of ***Mohan Lall Seal & Ors. vs. Kanak Lall Seal & Ors.***[6], was cited by Mr. Mitra to emphasize that in case of charitable and religious trusts, the trustees have an inherent obligation to act in the interest of the trust and its beneficiary and/or in other words, in public interest. Relying on the same judgment, it was also emphasized that all transfer of property held by religious or charitable trusts, should be done by issuance of public notices and/or advertisement and that such transfer should be given sufficient publicity to fetch the best offers. It has been submitted that in any case the development agreement impugned in the suit falls foul of the principles of

[3] (2005) 7 SCC 791
[4]AIR 1985 Cal 460
[5](1994)1 SCC 475
[6](2010) 3 CHN 597 (Cal)

fairness and transparency. Mr. Mitra therefore submitted that the order impugned in the appeal did not call for any interference.

14. A Privy Council judgment in the case of ***Gopi Narain Khanna v. Babu Bansidhar*** [7], was relied on to submit that if the "*plaint contains a statement of all the material circumstances, but the prayer of it is inartificially framed"* then it would be sufficient for the Court "*to give the plaintiff the appropriate relief if he was otherwise entitled to it".*

15. Mr. Surojit Nath Mitra in reply submitted that even if the plaintiffs gave up the relief sought for vide prayer (c) of the plaint, the suit would still remain a suit for land inasmuch as the appellants as developers had acquired substantial right and interest in the suit property and that any order passed in the suit would affect the appellants' interest and right in the suit property.

16. Referring to the pleadings in paragraph 12(vi) and 16 of the plaint, it was submitted that since the plaintiffs had not disclosed as to what necessitated a certified transcription of the declaration of 1960, on November 27, 2020, it should be reasonably inferred that the same was done upon getting knowledge of the Development Agreement that was entered into on August 07, 2019, for the purpose of instituting the suit.

17. Drawing attention of the Court to the pleadings at paragraph 14 of the plaint, it was submitted that the Plaintiffs admittedly had knowledge of the building being constructed in September 2024, yet they approached the Court in March 2025.

18. He also placed paragraph 15 of the plaint and submitted that the averments made therein to the effect that *"the members of the Indian Church Trustees held a meeting on 22nd of February 2025, and decided to take steps with regard to the dissipation of the church property without the concurrence or knowledge of the Church of India…"* clearly demonstrated that the suit in

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[7] MANU/PR/0016/1905

question was based on questions of right, title and interest in the suit property and the suit is thus a suit for land.

19. He then took us to the development agreement dated August 07, 2019, that had been annexed to the plaint. Inviting our attention to the first page thereof it was submitted that the same was not a copy of the certified copy of the registered document (i.e. development agreement) but a copy made directly from the original registered document itself. Mr. Mitra sought to subtly hint that the fact that the plaintiffs had annexed a copy of the registered development agreement precipitated the inference that the plaintiffs had access to the original registered development agreement itself which in turn was a pointer to the plaintiffs' knowledge thereof from the very inception of the said agreement.

20. He then submitted that the appellants had invested substantial sums in the project and had raised construction scaling upto six stories at the suit premises upon demolishing the existing structure thereat. Inviting the attention of this Court to Clause 11.1 of the development agreement dated August 7, 2019, it was submitted by Mr. Mitra that in terms of the said development agreement the appellants had already paid a sum of Rs.5,00,000,00/- (Rupees Five Crore) to the Indian Church Trustees. It was submitted that out of the said sum of Rs.5,00,000,00/- (Rupees Five Crore) the first tranche had been paid at the time when the said development agreement was entered into and the balance was paid later on in terms of the said agreement. Mr. Mitra submitted that the principal respondents/plaintiffs have not denied receipt of such payment. He expounded the point by submitting that once the development agreement had come to the knowledge of the principal respondents/plaintiffs and the same had been annexed to the plaint then if it was the principal respondents'/plaintiffs' case that such sum of Rs.5,00,000,00/- (Rupees Five Crore) had not been paid by the appellants to the credit of Indian Church Trustees, they ought to have denied the same in the plaint.

21. Placing clauses (a) and (b) of the power of attorney dated August 22, 2019, it was further submitted by Mr. Mitra that the said instrument granted wide

powers including power to obtain sanction and power of demolition of the existing building and structure at the suit property to the developer. It was submitted that the appellants had in exercise of such power already demolished the existing structure and have thus far raised a G+VI storied building/structure incurring considerable expense. It was submitted that the appellants thus have interest in and are in possession of the suit property and that any order passed in the suit would certainly affect the appellants' right, title and interest in and possession of the suit property. To buttress his contention, Mr. Mitra relied on a judgment of the Hon'ble Supreme Court in the case of ***Sumer Builders (P) Ltd. v. Narendra Gorani***[8] and placed paragraphs 2, 5 and 32 thereof. He also cited a Division Bench judgment of this Court in the case of ***Tridandeeswami Bhakti Kusum Sraman Maharaj & Ors. v. Mayapore Sree Chaitanya Math & Ors.***[9] in support of the contention that in a suit where the primary object was to establish title to land or for possession or control of land, then the suit would be a suit for land.

22. The principal respondents/plaintiffs rejoined by denying the assertion made on behalf of the appellants that a sum of Rs.5,00,000,00/- (Rupees Five Crore) had been credited to the account of Indian Church Trustees i.e. respondent no. 2 in terms of the development agreement dated August 7, 2019. It was submitted by the principal respondents/plaintiffs that money might have actually been paid to the proforma respondent nos. 3 and 4 and that no sum was credited to the account of the plaintiffs.

23. Paragraph 6 (c) of the application for stay was placed by the learned Senior Advocate representing the principal respondents/plaintiffs to argue that as the appellants were aware of the fact that the suit property was (is) the property of the Church, therefore, they could not have dealt with it without taking permission from the competent Court in terms of the relevant provisions of the Charitable and Religious Trust Act, 1920. Attention of the Court was also drawn to clause 3(l) of the development agreement to drive

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[8](2016) 2 SCC 582
[9]AIR 1983 Cal 420

home the point that the appellants were aware of the fact that the property in question was (is) a church property and that the same therefore could not have been dealt with without permission from the competent Court. Clause 22.2 of the development agreement was also placed to demonstrate that the said clause of indemnification has been consciously inserted to protect the appellants from any future claim, damage and loss inasmuch as the appellants were aware that the proforma respondents had no right to deal with the property in question.

24. It was further submitted by Mr. Jayanta Kumar Mitra, learned Senior Advocate appearing for the principal respondents/plaintiffs, that the Court should, in matters like the one at hand, tread cautiously keeping in mind the grave consequences of allowing a person who has no right, title and interest in a given property to continue to remain in possession thereof and make constructions thereat. It was submitted that in the suit in question too, if the appellants are allowed to carry on the construction at the suit property and create third party interest by selling portions of the constructed areas to different persons and after all of this if it is ultimately found that the appellants have no right, title and/or interest in the suit property then the situation would become unmanageably complex.

25. In answer to pointed queries of the Court as to why should the Court intervene and injunct construction of a building that had risen upto six stories when the plaintiffs themselves allowed such construction to come up by not approaching the Court earlier and as to why should the observations made by the Hon'ble Supreme Court in the case of ***Mandali Ranganna & Ors. v. T. Ramachandra & Ors.***[10] not apply to the facts of the present case, Mr. Mitra submitted that there was good explanation for the plaintiffs' belated approach to Court and for the said judgment to not apply here. It was submitted that as the plaintiffs dwell outside Kolkata, therefore, they did not have immediate knowledge about the construction. It was contended that the plaintiffs got knowledge about the construction only from the

[10](2008)11 SCC 1

advertisements and hoardings and the plaintiffs have rushed to Court promptly thereafter. It was then submitted on behalf of the plaintiffs that in the case of ***Mandali Ranganna***[10] (supra) the appellants had approached the Court late despite there being a public notice of the constructions and the order was passed in the wake of such belated approach.

26. On a further enquiry from Mr. Jayanta Kumar Mitra as why should the suit not be treated as one for land in the light of the submission of the appellants that despite the plaintiffs' foregoing prayer (c) of the plaint, the suit would still remain a suit for land inasmuch as the appellants as developers had acquired substantial right and interest in the suit property and any order passed in the suit would affect the appellants' interest and right in the suit property, Mr. Mitra submitted that since the principal prayers in the suit are for declaration that the development agreement is void and for cancellation and delivery thereof, which are based on Sections 26 and 31 of the Specific Relief Act, 1963, the suit would not be a suit for land upon giving up prayer (c) in the suit. Mr. Mitra also cited another Division Bench judgment in the case of ***Gloster Limited vs Bowreah Jute Mills Private Limited & Ors.***[11]**,** for the proposition that a suit for land is one which involves direct adjudication of title and/or possession in respect of land or other immovable property and that if a decree or order passed in a suit indirectly or consequentially affects title to and/or possession in respect of land, the suit cannot be said to be a suit for land.

27. Mr. Joydeep Kar, learned Senior Advocate appearing for the proforma respondent nos. 3 and 4 (defendant nos. 1 and 2) invited the attention of this Court to prayer (f) of the plaint and submitted that since the plaintiffs had sought for a decree for perpetual injunction restraining the defendants and/or each of them by themselves or through their agents, servants, representatives and/or assigns from disturbing the plaintiffs' peaceful possession in respect of the scheduled Premises, the suit was indeed a suit for land. In order to fortify his submission, Mr. Kar relied on a judgment of

[11] AIR 2014 Cal 230

the High Court of Madras in the case of ***Jethmull Chordia vs. C. Venkatasubba Reddy***[12].

28. He further submitted that the proforma respondents had evidence to show that money had been credited to the account of Indian Church Trustees i.e. the respondent no. 2 herein.

29. It was further contended by him that the proforma respondents as trustees had never seen the plaintiffs on board as trustees. Relying on the averments made in paragraphs 14 and 15 of the plaint, it was submitted by Mr. Kar that the same raise serious doubts about the plaintiffs' claim in the suit inasmuch as it is not expected of a trustee of the Indian Church Trustees to be unware of the properties that the Church owns.

30. Mr. Kar also referred to paragraph 23 of the order impugned to demonstrate that the order indeed directly hits the suit property and the same is therefore another pointer that the suit in question is a suit for land.

31. Having considered the submissions made on behalf of the respective parties in the light of the material on record, we are of the view that the order of injunction dated March 20, 2025 ought not to have been passed by the learned Single Judge in the facts and circumstances of the present case. There are good reasons that persuade us to reach such conclusion.

32. The first weighty reason for this Court to hold that the order of injunction ought not to have been passed is that we are *prima facie* satisfied that the suit could not have been filed on the original side of this Court as the same does not satisfy the conditions prescribed in clause 12 of the Letters Patent.

33. To start with, except the defendant nos. 1 and 2 none of the other defendants either reside or carry on business within the original jurisdiction of this Court. This Court has noticed that even in cases of such defendants, whose addresses given in the cause title clearly evince that the same lie beyond/outside the original jurisdiction of this Court, the same have been

[12] 2012 SCC OnLine Mad 5221

described in the cause title as *"within the aforesaid jurisdiction"* meaning within the original jurisdiction of this Court. It is in any case clear that all the defendants in the suit are not amenable to the original jurisdiction of this Court and as such the suit could not have been filed before this Court on the basis of the defendants' residence or place of business.

34. Insofar as the subject matter of the suit is concerned, the pleadings made in the plaint and the prayers thereof read cumulatively lead to the inescapable conclusion that the suit in question is actually a suit for land/immovable property situated outside the original jurisdiction of this Court.

35. The schedule of the plaint evinces that the subject property is situated within Karaya police Station outside the original jurisdiction of this Court. While it was submitted on behalf of the plaintiffs that they were ready and willing to forego the relief of declaration of title in respect of the suit property as sought for vide prayer (c) made in the plaint, still the character of the suit as one for land does not fade by even a shade.

36. Indeed, in the case at hand, a decree for cancellation of the development agreement has been sought. We also note the submission of Mr. Jayanta Kumar Mitra, learned Senior Advocate appearing for the plaintiffs that the suit in question is one based on Sections 26 and 31 of the Specific Relief Act, but we are unable to agree that even with such prayer for decree of declaration that the development agreement is null and void and for decree of cancellation of the said agreement, the suit could have been received by the Court and can be tried on its original side. There are several reasons for that.

37. Firstly, the development agreement appears to have been registered at the office of the Additional Sub-Registrar, Sealdah, beyond or outside the original jurisdiction of this Court. There is no pleading in the plaint that the agreement was executed within the original jurisdiction of this Court. Therefore, cause of action does not appear to have arisen within the original jurisdiction of this Court. In such view of the matter the suit could not have

been received by this Court on its original side and the Court cannot try it on the original side.

38. Secondly, even if there was a pleading in the plaint that the agreement was executed within the original jurisdiction of this Court, then also, taking the same on face value, that by itself would have formed only a part of cause of action for the suit. For a suit to be instituted on the basis of accrual of a part of cause of action within the original jurisdiction of this Court leave of this Court would be required to be taken under clause 12 of Letters Patent. It has not been demonstrated before us that any such leave has been obtained in the present case. Therefore, in our *prima facie* view, the suit could not have been received and cannot be tried on the original side of this Court even on the basis that it is a suit for mere annulment, cancellation and delivery of the development agreement and not for possession or title.

39. Furthermore, the said development agreement grants some kind of title or interest in the suit property to the developer and on the basis thereof the developer has admittedly taken possession of the suit property. We say admittedly because if the appellants had not been in possession there could not have been any construction done by them and there would not have arisen any necessity for the plaintiffs to file the application for injunction and to pray for an order "*restraining the respondents (sic defendants) Nos.1, 2, 3, 4, 5 and 6 and their men, servants, agents and/or assigns/representatives <u>from carrying out further construction</u> whatsoever in the impugned Construction ……..*" The averments in paragraph 14 of the plaint also clearly demonstrate that the appellants are in possession. In fact the "second" paragraph 44 of the application for injunction makes the picture clearer when it says *"There is extreme urgency in the matter in view of the facts that the Respondent is in the verge of completing the superstructure and has publicity materials out in the public inviting offers from the innocent buyers to invest in the impugned construction thereby threatening to create third party rights."*

40. In the wake of the aforesaid, prayer (f) in the suit, which is for a "*decree for perpetual injunction restraining the Defendants and/or each of them by*

themselves or through their agents, servants, representatives and/or assigns from disturbing the Plaintiffs' peaceful possession in respect of the scheduled Premises without any obstruction or interference in any manner whatsoever, directly or indirectly" becomes veritably meaningless. There can be no occasion for the Court to pass a decree for injunction restraining the defendants from interfering with the plaintiffs' possession, if the plaintiffs are not in possession. Therefore, only the prayers for decrees for declaration that the development agreement is null and void and for cancellation and delivery thereof remain. If that be so, in our *prima facie* view the suit itself may become vulnerable since there are prayers made for decrees for declaration that the development agreement is null and void and for cancellation and delivery thereof without seeking the consequential relief of delivery of possession. We are conscious that prayer (e) has been made seeking a decree for perpetual injunction restraining the defendants *"from acting on the basis, in furtherance (sic of) or in terms (sic of) or from giving effect to the impugned Joint Development Agreement dated 7th August, 2019 and the impugned Power of Attorney dated 18th August, 2019 being Annexures – "E" hereto or from deriving from any benefit therefrom in any manner whatsoever in relation to any part of the scheduled Premises, directly or indirectly"* but we are afraid that the same would not form the complete consequential relief in the absence of a prayer for recovery of possession when the plaintiffs are admittedly not in possession.

41. Be that as it may, taking the suit as it is, with all the pleadings in the plaint and the prayers made therein, we find substance in the submissions of Mr. Kar appearing for the proforma respondent nos. 3 and 4, that in the light of prayer (f) of the plaint where decree for perpetual injunction restraining the Defendants from disturbing the plaintiffs' peaceful possession has been sought, it cannot be said that the relief claimed does not relate to possession. While deciding as to whether or not relief like one sought through prayer (f) should be granted or not, the question of possession would necessarily fall for determination before the Court. In view of the aforesaid, it cannot be said that the plaintiffs' claim would not require

adjudication of any question relating to title and possession at all. In our *prima facie* view the claim in the suit relates to title and possession.

42. In the light of the aforesaid discussion, the plaintiffs' submission that - as title is not an issue in the suit (since title of the plaintiff no. 2 as the owner of the suit property has been admitted in the development agreement dated August 7, 2019) therefore the suit will no longer remain a suit for land upon the plaintiffs foregoing prayer (c) thereof - even if accepted on face value, does not in our *prima facie* view make the suit anything lesser than suit for land.

43. Such being the case, the ratio of the judgment in the case of ***Gloster Limited***[11] (supra) would, in our *prima facie* view, not help the plaintiffs inasmuch as the aforesaid decree prayed for vide prayer (f) of the plaint would directly affect possession and title of the parties to the suit, especially the appellants and not indirectly or consequentially as sought to be suggested by the plaintiffs.

44. In this regard the observation of the Hon'ble Supreme Court in the case of ***Sumer Builders (P) Ltd. v. Narendra Gorani***[8] (supra) cited by the appellants may also be noted:

> ***32.*** *The seminal issue is whether on the factual score which has been exposited, the application filed under Section 9 of the 1996 Act before the High Court of Bombay can be regarded as a money claim. On a studied scrutiny of the agreement and the MoU it is clear as day that the development agreement indubitably had created certain interests in the land in favour of the appellant.* <u>*The assertions made in the application along with the relief clause when read in entirety and appreciated in a holistic manner, it becomes luminescent that the core dispute pertains to possession of the land, for the appellant claims to be in exclusive possession and the respondent, per contra, has asseverated that it had taken over possession. It can irrefragably be stated that any order passed under Section 9 of the 1996 Act will have the impact on the land. It is difficult to accede to the submission that it will not conceptually fall within the category of "suit for land" as engrafted under Clause 12 of the Letters Patent. It is clearly a dispute with regard to the possession which is evincible from the correspondences and the averments made in the application preferred*</u>

under Section 9 of the 1996 Act. Thus, there has to be determination as regards possession and impliedly issue of direction for recovery of possession. Hence, the conclusion arrived at by the Division Bench on the basis of the scrutiny of documents that the dispute is embedded with regard to the possession of the land because the fundamental claim pertains to certain constructed space on the land and, therefore, it would conceptually fall within the conception of "suit for land" appearing in Clause 12 of the Letters Patent is unexceptionable. Prayer (a) quoted above seeks restraint by a temporary order or injunction from entering upon the property. It is difficult to accept the submission that it is a money claim and, therefore, the Bombay High Court would also have the territorial jurisdiction and accordingly we unhesitatingly repel the same.

(Emphasis supplied by underlining)

45. In fact the judgment of the Hon'ble Supreme Court in the case of ***Adcon Electronics***[1] (supra) cited by the respondents also speaks against the respondents/plaintiffs when it clarifies that a suit for land is a suit in which the relief claimed relates to the title or to delivery of possession of land or immovable property. The relevant paragraphs of ***Adcon Electronics***[1] (supra) are reproduced herein below:

> ***15.*** *From the above discussion it follows that a "suit for land" is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a "suit for land" or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a "suit for land". We are in respectful agreement with the view expressed by Mahajan, J. in MooljiJaitha case [AIR 1950 FC 83: 1949 FCR 849].*
>
> ***16.*** *In a suit for specific performance of contract for sale of immovable property containing a stipulation that on execution of the sale deed the possession of the immovable property will be handed over to the purchaser, it is implied that delivery of possession of the immovable property is part of the decree of specific performance of contract. But in this connection it is necessary to refer to Section 22 of the Specific Relief Act, 1963 which runs:*
>
> > *"22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—*

(a) possession, or partition and separate possession, of the property, in addition to such performance; or
(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:
Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief."

***18.** In the instant case the suit is for specific performance of the agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed, as such it cannot be treated as a "suit for land".*
(Emphasis supplied by underlining)

46. In this connection the judgment in the case of ***Tridandeeswami Bhakti Kusum Sraman Maharaj***[9] (supra) cited by the appellants also seems apposite. In paragraph 11 thereof it has *inter alia* been held thus:-

***11**……….. If the primary object is to establish title to land or for possession or control of land, then it would be a suit for land." If, on the other hand, the Court comes to the conclusion that the primary object is something else, it will not be a suit for land notwithstanding the fact that it may affect title to or possession of land…….*

47. We have already *prima facie* found that the decree prayed for vide prayer (f) of the plaint would directly affect possession and title of the parties to the suit, especially the appellants and not indirectly or consequentially as sought to be suggested by the plaintiffs.

48. The plaintiffs/principal respondents have while relying on the judgment of a Single Bench of this Court in the case of ***Sm. Parimal Mitra***[2] (supra) contended that even if it is assumed that the suit in question is a suit for land, then also this Court would still have jurisdiction to entertain the same since the reliefs of cancellation of the development agreement and the consequential injunctive reliefs as prayed for are founded on pleadings of fraud which has been stated to have been committed within the jurisdiction

of this Court. The relevant extract of ***Sm. Parimal Mitra***[2] (supra) may first be noticed:

> ***11.*** *In the instant suit also there is an allegation of fraud. In other words, the suit is founded on fraud and the fraud has been alleged to have been committed within the jurisdiction of City Civil Court, Calcutta. It is now an accepted principle of law that the Court within whose jurisdiction fraud is committed will be entitled to entertain a suit founded on fraud. From that point of view also the City Civil Court had jurisdiction to try the suit.*

49. We have considered the said judgment. The said judgment cannot and does not help the principal respondents/plaintiffs at all. To begin with, since the said judgment was rendered in the context of a case filed before the City Civil Court, territorial jurisdiction whereof was/is governed by the provisions of sections 16 to 20 of the Code and not in the context of a suit filed on the original side of this Court, which is governed by the provisions of Letters Patent, therefore, the said judgment would not apply to the case at hand. Section 120 of the Code in any case excludes application of Sections 16, 17 and 20 of the Code to the High Court in exercise of its original civil jurisdiction.

50. Even otherwise the suit in question would not be covered by ***Sm. Parimal Mitra***[2] (supra). In the said case, the Court ultimately concluded that the subject suit was indeed a suit for land and it was additionally held that since cause of action for fraud had also arisen within the territorial jurisdiction of the City Civil Court, such Court had jurisdiction to decide the suit. While we accept that a suit founded on fraud would be entertainable by a Court within whose jurisdiction fraud was committed, we would hasten to clarify that if the subject matter of a suit is land and the same is also founded on fraud (i.e. fraud constitutes the cause of action or constitutes one of the causes of action of such suit) then such suit would have to be instituted within the territorial jurisdiction of the court where the land is situated and not where fraud is committed unless the suit is governed by the proviso to Section 16 of the Code. We may explain the basis of our conclusion in the following manner:

a) Territorial jurisdiction of a civil court, (other than Chartered High Courts where Letters Patent applies) would have to be determined in terms of the provisions of Sections 16 to 20 of the Code.

b) The gamut of discussion in the cited case would involve Sections 16 and 20 only and if the case with which we are presently concerned had been presented in a court other than this Court, then the same would also have been governed by the said provisions only.

c) Section 16 provides that suits are to be instituted where the subject-matter of the suit is situated and Section 20 provides that other suits are to be instituted where defendants reside or cause of action arises.

d) A perusal of the aforesaid provisions would reveal that in case the suit is one for land then, in terms of the provisions of Section 16 of the Code only the court within whose territorial jurisdiction the subject land or the suit-land is situated would have jurisdiction to try the suit. The proviso to Section 16, however provides for an exception by stating that if any relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant is required to be obtained and if such relief can be entirely obtained through the personal obedience of the defendant then in such a case a suit can be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

e) Insofar as the decision as regards territorial jurisdiction of the court for filing a suit on the ground of fraud is concerned, the same would be governed by Section 20 of the Code and the Court within whose jurisdiction fraud is committed would be the court having jurisdiction to try such suit, as fraud would be the cause of action.

f) Now if both the elements (i.e. land as well as fraud) are involved, then also the suit would still have to be filed in terms of Section 16 and not in terms of Section 20 of the Code. This is because while there is a specific provision governing suit for land there is none for a suit founded on allegations of fraud. A suit based on allegations of fraud would therefore be governed by the "residuary" provision of Section 20.

51. Our aforesaid explanation owes its genesis to the observations of the Hon'ble Supreme Court in the case of ***Harshad Chiman Lal Modi***[3] (supra). The relevant paragraphs of the said judgment are quoted hereinbelow:

> ***15.*** *Now, Sections 15 to 20 of the Code contain detailed provisions relating to jurisdiction of courts. They regulate forum for institution of suits. They deal with the matters of domestic concern and provide for the multitude of suits which can be brought in different courts. Section 15 requires the suitor to institute a suit in the court of the lowest grade competent to try it. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. The proviso to Section 16 declares that where the relief sought can be obtained through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the jurisdiction of different courts. Section 18 applies where local limits of jurisdiction of different courts are uncertain. Section 19 is a special provision and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19.*
>
> ***16.*** *Section 16 thus recognises a well-established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction*

over a dispute in which it cannot give an effective judgment. *The proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on a well-known maxim "equity acts in personam", recognised by the Chancery Courts in England. The Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that the courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam i.e. by arrest of the defendant or by attachment of his property.*

21. *A plain reading of Section 20 of the Code leaves no room for doubt that it is a residuary provision and covers those cases not falling within the limitations of within its sweep all personal actions. Sections 15 to 19. The opening words of the section, "subject to the limitations aforesaid" are significant and make it abundantly clear that the section takes thus within its sweep all personal actions. A suit falling under Section 20 thus may be instituted in a court within whose jurisdiction the defendant resides, or carries on business, or personally works for gain or cause of action wholly or partly arises.*

(Emphasis supplied by underlining)

52. Now we once again turn to the law applicable to the case at hand. There can be no dispute that the suit in question having been filed on the Original Side of this Court, would have to conform to the requirements of clause 12 of Letters Patent. The said clause reads thus:

***12. Original jurisdiction as to suits**.- And We do further ordain that the said High Court of judicature at Fort William in Bengal, in the exercise of its ordinary original Civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immoveable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell, or carry on business, or personally work for gain within the local limits of the ordinary original jurisdiction of the said High Court, except that it shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Calcutta, in which the debt or damage, or value of the property, sued for, does not exceed one hundred Rupees.*

53. A perusal of the above would clarify that this Court is empowered to receive, try, and determine suits for land or other immoveable property only if such land or property is situated within the local limits of the ordinary original jurisdiction of this Court. In other cases such suit can be instituted if the cause of action arises wholly within the jurisdiction of this Court or the defendants reside or carry on business within the jurisdiction of this Court or the cause of action arises wholly within the jurisdiction of this Court. In case only a part of cause of action arises within the jurisdiction of this Court leave of this Court would have to be sought first and if such leave is granted the suit can be tried by this Court. A comparative reading of the provisions of Sections 16 and 20 of the Code and that of clause 12 of Letters Patent would at once reveal that the provisions of Sections 16 and 20 of the Code taken cumulatively express only that which has been succinctly summed up in Clause 12 with only two exceptions.

54. The first of such exceptions is that in order to invoke the original jurisdiction of this Court, in a case where only a part of cause of action has arisen within the jurisdiction of this Court, leave would have to be obtained. The second exception is that there is no provision in clause 12 akin to the proviso to Section 16 of the Code that allows a suit *to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant*, to be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain provided the relief sought can be entirely obtained through the personal obedience of the defendant. Since a provision similar to the proviso to Section 16 of the Code is absent in clause 12 therefore, we need not engage ourselves with the same in the case at hand.

55. Now coming back to clause 12, the usage of the expression "*or <u>in all other cases</u>"* after the provision for suit for land and before the expression <u>*"if the cause of action shall have arisen"*</u>, gives a screaming hint that the preceding part providing for suit for land is a specific provision governing suits

concerning immovable property and the succeeding or subsequent part is the residuary part governing suits instituted on the basis of cause of action. The provision is clear and it admits/allows no exception when it says that suits of other types based on cause of action other than land i.e. "*in all other cases*" can be filed in the Court "*if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court*".

56. In such a situation, there is no reason for us to not apply the ratio of the judgment of the Hon'ble Supreme Court in the case of ***Harshad Chiman Lal Modi***[3] (supra) to the facts of this case and hold that a suit which is otherwise a suit for land could not have been filed on the original side this Court only on the basis of the allegation that fraud was committed within the jurisdiction of this Court and that such cause of action arose within the jurisdiction of this Court.

57. Even otherwise, the plaintiffs were not entitled to the *ex-parte* ad interim order of injunction that was granted, on the ground of delay and acquiescence. Upon perusal of the plaint case it appears that the principal respondents (plaintiffs) have been unduly tardy in their approach to Court. To wit, as per the principal respondents' own case in paragraph 14 of the plaint, they got knowledge about the construction that was being carried on at the suit property in or around September, 2024, yet the suit came to be instituted only in March, 2025, i.e. almost six months after acquiring of knowledge of construction. In fact the pleadings in the "second" paragraph 44 of the application for injunction to the effect that *"There is extreme urgency in the matter in view of the facts that the Respondent is in the verge of completing the superstructure and has publicity materials out in the public inviting offers from the innocent buyers to invest in the impugned construction thereby threatening to create third party rights"* clearly demonstrate the plaintiffs' utterly delayed approach to Court.

58. The plaintiffs have sought to explain the delay by asserting (in the paragraphs following paragraph 14 in the plaint) that they had been conducting searches and that it was only *"sometime around December 2024"* that the plaintiffs came to learn that the appellant no.1 had been claiming to develop the property *"in association with the Plaintiff No. 1"*. It has been further alleged that it was thereafter that the plaintiffs conducted further searches and came to learn about the development agreement dated August 7, 2019. It is nigh impossible to believe that in the age of digitization and computerization when records of property registration (if not all records then at least the major details thereof) are available at the click of a few buttons, it took months for the plaintiffs to get to the details as alleged. Furthermore, when the plaintiff no. 1 claims to be the repository of all powers relating to the management of the Church properties it was incumbent on him to be all the more wary and vigilant. It is incomprehensible that such a person would be unaware of the status and position of properties that he is required to manage and protect.

59. We have noticed the pleadings in the application for injunction including the one in paragraph 44 thereof but the same do not justify grant of *ex parte* ad interim order of injunction. The order impugned too does not reveal any acceptable reason justifying non issuance of notice before the grant of such ex *parte* ad interim order of injunction.

60. When it now stands admitted that substantial constructions have come up over a period of time and have been continuing for a period of at least six months it would be wholly inequitous to grant ex-parte ad interim relief as prayed for. As the plaintiffs' approach was evidently belated, notice could not have been dispensed with. It is now settled that if constructions have come up the same should not be stalled unless the party objecting to construction has been able to bring forth exceptional material like lack of sanctioned plan that would persuade the Court to pass a restraint order.

61. Furthermore, the development agreement dated August 7, 2019, reveals that a sum of Rs. 5,00,00,000/- had been paid to the Indian Church Trustees i.e.

respondent no. 2 by the appellants. A copy of the development agreement forms part of the plaint as an annexure which demonstrates that the principal respondents had knowledge about such assertion in the development agreement. In fact the principal respondents have also relied on various clauses of the said agreement during the hearing. What surprises us is that despite knowledge about such recital in the agreement there is no assertion in the plaint that such amount or any part thereof had not been received by the plaintiff no. 2. We are aware that the plaintiffs have denied receipt of such payment during the hearing before us and have sought for cancellation of the development agreement but then cancellation of the development agreement would be the final relief, if the suit withstands trial and succeeds. At the *ex-parte* ad interim stage the averments in the plaint would matter the most. Non-denial by the respondents/plaintiffs of a strong statement (in the recital of an agreement) alleging payment of a sum to the tune of Rs.5,00,00,000/- to the respondent no. 2 itself who has challenged the agreement cannot be lightly ignored at the *ex-parte* ad interim stage.

62. It is now well settled that relief of injunction is an equitable relief and both delay and acquiescence defeat equity. The Hon'ble Supreme Court had in the case of ***Mandali Ranganna***[10] (supra) while considering a similar fact situation refused to grant injunction against the Builder/Developer, with the following observations:

> *21. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto viz. existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.*
>
> *22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not, however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must*

make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.

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26 *Rightly or wrongly constructions have come up. They cannot be directed to be demolished at least at this stage. Respondent 7 is said to have spent three crores of rupees. If that be so, in our opinion, it would not be proper to stop further constructions.*

27 *We, therefore, are of the opinion that the interest of justice would be sub served if while allowing the respondents to carry out constructions of the buildings, the same is made subject to the ultimate decision of the suit. The trial court is requested to hear out and dispose of the suit as early as possible. If any third-party interest is created upon completion of the constructions, the deeds in question shall clearly stipulate that the matter is sub judice and all sales shall be subject to the ultimate decision of the suit. All parties must cooperate in the early hearing and disposal of the suit. The respondents must also furnish sufficient security before the learned trial Judge within four weeks from the date which, for the time being, is assessed at rupees one crore.*

[Underscored for emphasis]

63. The above-quoted observations of the Hon'ble Supreme in paragraphs 21, 22 and 26 of the judgment in the case of ***Mandali Ranganna***[10] (supra) clearly guide us to decide against the plaintiffs at this stage.

64. The submission of the plaintiffs, while referring to paragraph 20 thereof, that the said judgment would not apply to the facts of the instant case inasmuch as in the said case a public notice had been issued does not appeal to us at all. We have already discussed hereinabove that the averments in paragraph 14 of the plaint and paragraph 16 of the application for injunction clearly evince that the plaintiffs acquired knowledge about the construction in September 2024 and that the explanation proffered by the plaintiffs in the subsequent paragraphs do not justify their belated approach to court.

65. Insofar as the judgments in the case of ***Committee of Management of Pachaiyappa's Trust***[5] (supra) and ***Mohan Lall Seal & Ors.***[6] (supra) cited by the plaintiffs are concerned, the same are indeed instructive and edifying as regards the manner in which a Trust Property should be dealt with but the same would not help the plaintiffs in the present case and at the present stage at all. We are at the ad interim stage and the maintainability of the suit rather the jurisdiction of this Court to try the suit itself is under question. The question as to whether the Trust property has been properly dealt with or not can be thrashed out only upon evidence and not at the *ex parte* ad interim stage. The said judgments would not therefore aid the plaintiffs in sustaining the impugned ad interim order of injunction.

66. As regards the Privy Council judgment in the case of ***Gopi Narain***[7] (supra) this Court is of the view that the instant case is not at all of "*inartificially framed"* prayers. It is rather a case where the prayers resonate with the pleadings and therefore lead the Court to form the *prima facie* view that the court lacks jurisdiction to try the suit in question.

67. Insofar as the judgment in the case of ***Macneill and Magor Ltd.***[4] (supra) is concerned, the same was cited by the plaintiffs to assert that the provisions of Order 7 Rule 10 of the Code do not apply to this Court and that in the said case the Court had therefore exercised powers under Section 24 of the Code to transfer the suit while keeping the interim order intact till the transfer was effected.

68. The said judgment was delivered in an appeal against an order dismissing the suit for want of jurisdiction as the suit in question was suit for land. Such order had been passed on an application by the defendants in the suit praying for dismissal of the suit for want of jurisdiction. In the case at hand, the appeal is against an *ex parte* ad interim order of injunction i.e. an order passed by the court at a stage when it was considering *prima facie* case.

69. It is now well settled that if at the stage of considering prima facie case, the Court finds from the averments made in the plaint itself, that the Court has no jurisdiction to entertain the suit in accordance with law, it should reject the application for injunction on the ground of absence of prima facie jurisdiction of the Court to give the ultimate relief to the plaintiff. ***(See - Axis Bank Ltd. v. MPS Greenery Developers Ltd.)***[13]

70. It is equally well settled that the scope of an appeal against an *ex parte* ad interim order of injunction is limited only to the examination as to whether the order under appeal is correct or not, therefore, our findings in this judgment would only be *prima facie*. In any case, in terms of Section 107 of the Code and principles analogous thereto, this Court being the appellate Court would have the same powers and duties as that of the original Court and in such view of the matter, we do not deem it proper for us to exercise the power under Section 24 of the Code at this stage.

71. We could have passed an order imposing exactly similar conditions as regards stipulation about the matter being *sub judice* in deeds creating third party rights and interests and furnishing sufficient security before the learned Trial Judge, as done by the Hon'ble Supreme Court in paragraph 27 of the judgment in the case of ***Mandali Ranganna***[10] (supra) but we are dissuaded from doing in view of the fact that in the case before the Hon'ble Supreme Court, jurisdiction of the court was not in issue and in the instant case we have *prima facie* found that this Court lacks jurisdiction to entertain the suit for reasons detailed hereinabove. We therefore set aside the order dated March 20, 2025, passed in G.A. No. 1 of 2025 in connection with C.S No. 35 of 2025 with the observation that the construction conducted by the appellants shall abide by the result of the suit.

72. With the aforesaid observations APOT 94 of 2025 stands allowed. GA 1 of 2025 stands disposed of accordingly. No order as to costs.

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73. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Arijit Banerjee, J.) **(Om Narayan Rai, J.)**

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74. After the judgment is pronounced, learned Advocate for the respondents/plaintiffs prays for stay of operation of the judgment and order.

75. The prayer is considered and refused.

(Arijit Banerjee, J.) **(Om Narayan Rai, J.)**