

OD-3 wt 4 & 11

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
IN AN APPEAL FROM AN ORDER PASSED IN ITS
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

**APO/51/2025
WITH CS/128/2016
IA NO: GA/1/2025**

**SURENDRA AGARWALA
VS
INDIRA GUPTA AND ORS**

WITH

**APDT/26/2025
IA NO: GA/1/2025, GA/2/2025**

**PUSHKAR KUMAR AGARWALA
VS
SURENDRA AGARWALA AND ORS**

-AND-

**APDT/27/2025
IA NO: GA/1/2025**

**NARENDRA KUMAR AGARWALA AND ANR
VS
SURENDRA AGARWALA AND ORS**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant

: Mr. Chayan Gupta, Adv.
Mr. Pourush Bandyopadhyay, Adv.

Mr. Arun Kr. Mishra, Adv.

For the Respondent No. 5 : Mr. Mainak Bose, Sr. Adv.
Mr. Rishav Karnani, Adv.
Mr. S. N. Pandey, Adv.

For the Respondent No . 2 & 7 : Mr. Aditya Garodiya, Adv.
Mr. Aritra Basu, Adv.
Mr. Pintu Ghosh, Adv.

HEARD ON : 19.12.2025
DELIVERED ON : 19.12.2025

DEBANGSU BASAK, J.:-

1. Three appeals are taken up for analogous hearing as they emanate out of the same impugned judgment and order dated April 8, 2025 passed in three interlocutory applications filed in CS No. 128 of 2016.
2. By the impugned judgment and order, learned Single Judge granted relief to the plaintiff to the suit to a certain extent. Plaintiff is aggrieved by the portion of the relief which was not granted by the learned Single Judge and therefore, filed an appeal being APO/51/2025.
3. The next appeal is at the behest of defendant no. 5 in the suit. The appeal of the defendant no. 5 is registered as APDT/26/2025 while

the appeal of the defendant nos. 2 and 7 is registered as APDT/27/2025.

4. For the sake convenience, the parties in the present three appeals are referred to in the manner as they appear in the plaint in the suit.
5. Plaintiff filed a suit for partition and administration of the assets and properties of the Agarwala family being CS/128/2016. In such suit, plaintiff filed three interlocutory applications being GA/2/2016, GA/5/2017 and GA/12/2021.
6. Essentially, by those three interlocutory applications, the plaintiff was seeking interim protection relating to the assets involved in the suit.
7. Plaint case of the appellant is that, the properties described in the Schedules A, B, C and D to the plaint emanated out of the joint family business. They are joint family assets and liable to be partitioned and administered, in accordance with law. In Schedule A to the plaint, list of immovable properties are described while Schedule B to the plaint describes bank accounts of the joint family, Schedule C describes the lockers and Schedule D describes the Demat/Share accounts.
8. Contention of the plaintiff in its appeal is that, since, assets of joint family described in the four schedules to the plaint belong to the joint family, in absence of a partition and administration in

respect thereof, such properties and assets should be protected and preserved till the disposal of the suit.

- 9.** Learned Advocate appearing for the plaintiff submits that, the learned Judge erred in not granting the relief of protection and preservation of the assets and properties described in the four schedules to the plaint. He submits that, the plaintiff established at the prima facie level that, the corpus of the assets and properties emanated out of the joint family with none of the defendants establishing any independent source of income. Rather, assets belonging to the joint family were utilized for the purpose of creating further assets. In particular, he refers to a partnership firm which subsequently converted into a sole proprietorship. He submits that, the land admittedly belonged to the plaintiff and his son, was utilized for the purpose of other business of the joint family bidding at different auctions.
- 10.** Learned Advocate appearing for the plaintiff submits that, during the pendency of the suit, the assets and properties described in the plaint should be adequately preserved.
- 11.** Learned Senior Advocate appearing for the defendant no. 5 submits that, the immovable properties in respect of which the plaintiff claims the share is at best can sustain a claim of 1/8 for the plaintiff. Apart from the parties to the suit, such properties are owned by other persons. Such persons are not parties to the suit.

- 12.** Learned Senior Advocate appearing for the defendant no. 5 submits that, the assets described in the four schedules to the plaint were not established to be of the joint family. Relying upon **(2003) 10 Supreme Court Cases 310 (D.S. Lakshmaiah and Another Vs. L. Balasubramanyam and Another)**, he submits that, the plaintiff is required to establish and prove the jointness. Plaintiff also is not making out a case of the assets being blended into the joint family by the other defendants. In absence of such proof, the plaintiff is not entitled to any relief.
- 13.** Learned Senior Advocate appearing for the defendant no. 5 submits that, all assets and properties belonging to the defendant no. 5 are self-acquired. They did not form a part and parcel of the joint family business. The parties were not living in a separate mess. They were separate at all material point of time. The defendant no. 5 commenced and developed his individual business. Such business cannot come within the four corners of the suit or the joint family business as erroneously claimed by the plaintiff.
- 14.** Learned Advocate appearing for the defendant nos. 2 and 7 submits that, the material allegations made against his client were denied by filing affidavits. He submits that, there is no jointness in the family for the assets described in four schedules to the plaint to be considered as joint family assets. Relying upon **(2004) 11**

Supreme Court Cases 320 (P.S. Sairam and Another Vs. P.S.

Rama Rao Pissey and Others), learned Advocate appearing for the defendant nos. 2 and 7 submits that, the plaintiff failed to establish that, there was jointness. He contends that, there is no presumption under Hindu Law that a business standing in the name of any member of the joint family is a joint family business, even if that member is the manager of the joint family.

15. Referring to the facts and circumstances of the present case, learned Advocate appearing for the defendant nos. 2 and 7 submits that, the fact that the plaintiff worked in some capacity or the other in one of the businesses enumerated in the schedule to the plaint does not convert such business into a joint family business. He submits that, the interim order granted in favour of the plaintiff by the impugned judgment and order should be vacated.
16. As noted above, learned Single Judge disposed of three interlocutory applications filed at the behest of the plaintiff in a suit for partition and administration of joint family assets.
17. Plaint case is that, the parties to the suit are children of late Hazari Lal Agarwala. There were various businesses and properties of late Hazari Lal Agarwala, since deceased, acquired out of his own funds. Such assets and properties are described in Schedule A to the plaint.

18. Plaintiff alleges that, there were various joint family businesses of late Hazari Lal Agarwala which were continued subsequent to his death. It is alleged that, such businesses were formed and continued out of the joint family corpus and expenditure and outgoings in respect of such businesses were all along incurred from the joint family corpus. The income of the business was brought into the till of the joint family. Joint family businesses are described in the plaint.
19. Plaintiff also alleges that, several bank accounts and Demat accounts were opened as well as bank lockers which belonged to the joint family.
20. In such suit, from time to time, plaintiff applied for interim relief by way of three applications.
21. All of the three applications were disposed of by the impugned judgment and order.
22. **D.S. Lakshmaiah and Another (supra)** was rendered in a suit which was decreed. Similarly, **P.S. Sairam and Another (supra)** was rendered in a suit where there was a decree passed. The validity and legality of the decree passed in these two suits were in question before the Hon'ble Supreme Court in those two authorities. On an appreciation of the evidence at the trial, the Supreme Court was pleased to find whether or not, the burden of proof was adequately discharged.

- 23.** In **D.S. Lakshmaiah and Another (supra)**, the Supreme Court noted a privy council and is of the view that, the proof of existence of a joint family does not lead to the presumption that property held by any member of family is joint. The burden rests upon anyone asserting that any item or property is joint to establish such fact. However, where it is established that the family possessed some joint property which from its nature and relative value may form the nucleus from which the property in question may be acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property.
- 24.** In the facts and circumstances of the present case, on the ratio, enunciated in **D.S. Lakshmaiah and Another (supra)**, we find that, there was a joint family business during the lifetime of the deceased father of the parties to the suit. Father of the parties to the suit expired on July 26, 1999. Subsequent thereto, there is no materials on record that, prior to the expiry of the father of the parties to the suit, the defendants established any business or acquired any of the properties from their own funds. That is not the averment in the affidavits filed by the answering defendants, nor is such a case in the written statement filed by them. Therefore, we are of the view that the plaintiff is in a position to establish at least at the prima facie level that, there was a joint

family and that, businesses and properties were acquired out of the joint family.

- 25.** Learned Single Judge granted a preliminary decree in respect of some of the immovable properties concerned, on the basis of the admission of the defendant nos. 2 and 7.
- 26.** It is the contention of the defendant no. 5 that, such admission was not made by the defendant no. 5 and therefore, no preliminary decree could be passed as done in paragraph 56 of the impugned judgment and order.
- 27.** With the deepest of respect, we are not in a position to accept of the contention of the defendant no. 5. Defendant nos. 2 and 7 in the appeal, is not contending that, the learned Single Judge recorded paragraph 56 wrongly. Learned Single Judge proceeded to pass the preliminary decree in respect of four of the immovable properties concerned on the basis of the admission made by the defendant nos. 2 and 7 before such Court.
- 28.** Properties in respect of which, preliminary decree was passed by the learned Trial Judge in the impugned judgment and order, therefore, can safely be considered to be joint family properties. Preliminary decree passed in respect thereof, need not be upset.
- 29.** Apart from such reasoning, we find from the records that, the averments made in the plaint as also in the injunction petition are that, late Hazari Lal Agarwala died, seized and possessed of

various immovable properties and various family businesses. The case of the answering defendants is that neither the immovable properties, nor the businesses were joint.

30. Significantly, late Hazari Lal Agarwala expired on July 26, 1999.

As on the date of death of late Hazari Lal Agarwala, each of the parties to the suit were adults. The contesting defendants were in excess of 30 years of age on the date of death of their father.

31. Nothing is placed on record to suggest that, the immovable properties, businesses, bank accounts, Demat accounts and lockers, spoken of in the plaint, were acquired or established by any of the answering defendants from out of their own funds.

32. Today, the interlocutory Court is faced with the proposition of assessing three injunction petitions on the principles of prima facie case, balance of convenience, irreparable loss and injury. The interlocutory Court is also concerned with the protection and preservation of the properties both movable and immovable, comprised in the suit till the disposal of the suit.

33. Respective assertion made by the parties to the suit, in the interlocutory stage, does not permit a Court to return a conclusive finding that, none of the properties involved are joint family properties. Rather, there is a concession made by the defendant nos. 2 and 7 in respect of at least four of the immovable properties

as recorded by the learned Single Judge in the impugned judgment and order in paragraph 56 thereof.

- 34.** Apart therefrom, we do not find that, the assertion of the plaintiff that, the properties both movable and immovable described in Schedules A to D of the plaint, were adequately dislodged by the answering defendant. They do not specify the dates on which the individual businesses were commenced, the source of funds for commencing such individual businesses as also the date of acquisition of the immovable properties concerned. In absence of such particulars, we are of the view that, the plaintiff is able to make out a prima facie case to go to trial. Plaintiff is also able to make a prima facie case warranting consideration of the reliefs as prayed for in the injunction application. Balance of convenience and inconvenience lies overwhelmingly in favour of the plaintiff in granting the interim reliefs as the plaintiff prayed for.
- 35.** Protection and preservation of the assets and properties involved in the suit are of paramount importance. Unless they are protected and preserved, the same is likely to give rise avoidable litigation and is likely to prejudice the parties on a final decision at the suit. Plaintiff will suffer irreparable loss and injury, unless interim protections are granted.

- 36.** Learned Single Judge granted interim protection to the plaintiff. Adequacy and sufficiency of such interim protection is questioned by the plaintiff in its appeal.
- 37.** We find from the record that, the learned Single Judge granted protection with regard to some of the properties involved. We are of the view that, since, the plaintiff made out a prima facie case for grant of interim protection and that, the properties involved in the suit require protection and preservation till disposal of the suit, we add to the interim protection granted by the learned Single Judge in the impugned judgment and order.
- 38.** Parties to the suit are enjoined from dealing with, disposing of, encumbering and/or changing the nature and character of any of the immovable properties described in Schedule A to the plaint till the disposal of the suit. So far as the Schedule B to the plaint is concerned, the defendant shall submit monthly statement of accounts with the Advocate-on-record of the plaintiff. In default, the defendants are restrained from operating any of the bank accounts described in Schedule B to the plaint.
- 39.** Inventory of the lockers described in Schedule C to the plaint was made before the learned Single Judge. The parties to the suit are restrained from disposing of, dealing with and/or creating any third party interest, in any manner whatsoever and any of the items inventorised in respect of Schedule C of the plaint.

- 40.** So far as Schedule D to the plaint is concerned, the defendants will submit statement as directed by the learned Single Judge to the Advocate-on-record of the plaintiff.
- 41.** We are conscious of the fact that, we are returning finding with regard to the jointness of the family, its businesses and assets, at an interlocutory stage. We clarify that our findings are prima facie in nature and for the purpose of adjudicating the rights of the parties at the interlocutory stage. Needless to say that these findings of ours should not be read as final findings at the trial of the suit.
- 42.** Three appeals along with connected applications are disposed of accordingly, without any order as to costs.

(DEBANGSU BASAK, J.)

- 43.** I agree.

(MD. SHABBAR RASHIDI, J.)