

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1501 OF 2024**

1, Pralhad Balkrishna Balghare,
Age 72 years, Occu – Agriculturist

2. Vidya Pralhad Balghare,
Age 57 years, Occu. Housewife

Both residing at :
Survey No.203/2B,
Rajiv Nagar (South), Viman Nagar,
Pune 411 014.

... Petitioners

versus

Suryakant Balkrishna Balghare,
Adult, Occu – Agriculturist,
R/at 203/2B, Rajiv Nagar (South),
Viman Nagar, Pune – 411 014.
Also address at
Flat No.801, 803 A Wing, 8th Floor,
Optimus CHS, Opp. Lunkad,
Queensland, Mahada Road,
Viman Nagar, Pune – 400 014.
Through the Power of Attorney Holder
Sagar Shivaji Khandve,
Adult, Occu – Agriculturist,
R/at : Survey No.102, Daulat Bungalow,
Near Datta Mandir, Lohagaon,
Pune – 411 017.

... Respondent

Mr. A.V.Anturkar, Sr. Advocate with Mr. Drupad Patil with Mr. Yatin Malvankar,
for Petitioners.

Mr. Anurag Mishra i/by Mr. Avinav R., for Respondent.

CORAM: N.J.JAMADAR, J.

**CLOSED FOR ORDERS ON : 23 JANUARY 2025
PRONOUNCED ON : 16 APRIL 2025**

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RAMCHANDRA
SANKPAL

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JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.

2. The Petitioners – Defendants take exception to a judgment and order dated 27 October 2023 passed by the learned District Judge, Pune in Misc. Civil Appeal No.221 of 2022, whereby the appeal preferred by the Petitioners came to be dismissed affirming the order dated 11 April 2022 passed by the learned Civil Judge, Sr. Division, Pune in RCS No.2034 of 2019, thereby restraining the Petitioner – Defendant No.2 from selling, transferring, assigning or alienating the suit property on the basis of Gift Deed dated 25 April 2013 and 17 June 2013 in any manner, till further orders.

3. The background facts leading to this Petition can be stated, in brief, as under :

2.1 Shivram Laxman Balghare was the common ancestor. Shivram had acquired a number of properties, including the agricultural lands bearing No.203/2B of Village Lohegaon, Gat No.533 of Village Ambegaon and Gat No.385 of Village Ambegaon (suit properties). Shivram passed away on 13 August 1978, leaving behind Laxmibai, the widow, who passed away in the year 1979; three sons, namely, Shankar, Haribhau and Balkrishna and two daughters Nirabai and Shantabai. Balkrishna passed away on 2 March 1989,

leaving behind Yashodabai, the widow, who passed away on 21 August 2001; two sons, Pralhad – Defendant No.1 and Suryakant – Plaintiff, and three daughters Hirabai, Pushpalata and Sharda. Vidya – Defendant No.2 is the wife of Pralhad – Defendant No.1.

2.2 Ashok and Maruti, the sons of Haribhau, had instituted suit No.1273 of 1990 for partition and separate possession of their share in the joint family properties, including the suit properties. The successors in interest of Balkrishna, including Pralhad – Defendant No.1 and Suryakant – Plaintiff were impleaded as Defendant Nos.9 to 14 therein.

2.3 By a judgment and order dated 31 October 2000, the said suit was decreed and each of the Plaintiffs therein, were declared to be entitled to get 6/80th share out of the suit properties. Defendant Nos.9 to 14 therein (including Pralhad – Defendant No.1 and Suryakant – Plaintiff) were declared to be entitled to 6/20th share together out of the suit properties.

2.4 An appeal against the said decree, being Appeal No.193 of 2001, came to be dismissed on 9 January 2003. Final decree proceedings in the said suit are pending.

2.5 Pralhad and Vidya – Defendant Nos.1 and 2, instituted a suit, being RCS No.254 of 2018, for declaration, injunction and separate possession of their share of the joint family properties, including the suit properties, which were described at paragraph Nos.1B, 1C and 1D of the plaint. Defendant

Nos.1 and 2 asserted that in Suit No.1273 of 1990, the individual shares of Pralhad – Defendant No.1 and Suryakant – Plaintiff and the other successors in interest of Balkrishna, were not declared by the Court. Till date, the suit properties have not been divided by meets and bounds, except the land located at Survey No.211, Lohegaon (suit property 1A therein). Defendant Nos.1 and 2, thus, prayed for separate possession of their share of the suit properties. In the alternative, the suit properties be sold by auction and the sale proceeds be divided, if partition by meets and bounds was not possible, and further consequential reliefs.

2.6 Suryakant instituted RCS No.2034 of 2019 asserting that the persusal of the plaint in RCS No.254 of 2018 instituted by Defendant Nos.1 and 2 revealed that the Defendant No.1 had transferred undivided share out of the suit property 1A i.e. Survey No.203/2B of Village Lohegaon by way of gift under the Registered Gift Deed dated 25 April 2013 in favour of Defendant No.2. Likewise, Another Gift Deed has been executed in favour of Defendant No.2 in respect of the suit properties 1B and 1C i.e. Gat Nos.533 and 385 situated at Ambegaon. The Plaintiff in RCS No.2034 of 2019, thus, averred that the Gift of undivided interest by the Defendant No.1 in favour of Defendant No.2 is illegal and void. Thus, action by way of suit for declaration that the said Gift Deeds dated 25 April 2013 and 17 June 2013 are illegal, non-est and void ab-initio and do not bind the share of the Plaintiff in the suit

properties and the consequential relief of injunction.

2.7 In the said suit, the Plaintiff prayed for temporary injunction to restrain the Defendants from alienating or otherwise creating third party interest in the suit properties on the basis of the said Gift Deeds. By an order dated 11 April 2022, the learned Civil Judge was persuaded to allow the application and thereby restrain Defendant No.2 from alienating or otherwise creating third party interest in the suit properties on the strength of the said Gift Deeds. The learned Civil Judge was of the view that the suit properties were admittedly joint family properties. The Defendants themselves had instituted a suit for partition and separate possession of the joint family properties being RCS No.254 of 2018. Prima facie, Defendant No.1 had no right to alienate the undivided interest in the suit properties by way of gift. It was, therefore, necessary to restrain Defendant No.2.

2.8 Aggrieved, the Defendants preferred an appeal before the District Court. The learned District Judge found no reason to interfere with the order passed by the trial Court. Referring to the Articles 258 and 267 of Mulla's Hindu Law, 16th Edition, the learned District Judge held that there was an express prohibition against the transfer of undivided interest by way of gift. Referring to the fact that the Defendants had instituted a suit for partition and separate possession of their share in accordance with the decree passed in RCS No.1273 of 1990 and there were other documents which indicated that

the Plaintiff and Defendant No.1 reckoned that the suit properties were not partitioned and they had undivided interest therein, the learned District Judge returned a finding that the Plaintiff had made out a prima facie case. The elements of balance of convenience and irreparable loss were also found in favour of the Plaintiff.

3. Being further aggrieved, the Defendants have invoked the writ jurisdiction of this Court.

4. I have heard Mr. Anil Anturkar, learned Senior Advocate and Mr. Drupad Patil, learned Counsel for the Petitioners, and Mr. Anurag Mishra, learned Counsel for the Respondent, at some length. Learned Counsel took the Court through the pleadings, orders passed in the previous proceedings and the material on record.

5. Mr. Anturkar, learned Senior Advocate for the Petitioners, urged that both the Courts below have committed an error in law in returning a prima facie finding that the suit properties continued to be joint family properties. This incorrect impression of the character of the property has singularly vitiated the determination by the Courts below. Taking the Court through the averments in the plaint, wherein the Plaintiff has categorically asserted that the suit properties were self acquired properties of Shivram, the grand father of Plaintiff and Defendant No.1, Mr. Anturkar would urge that, with the demise of Balkrishna in the year 1989, there was a notional partition and the said

notional partition was required to be taken to its logical end. Consequently, the character of the suit properties as joint family properties came to an end with the demise of Balkrishna, in the year 1989.

6. Once the aforesaid position is accepted, which, according to Mr. Anturkar, is an inevitable consequence of the notional partition under Section 6 of the Hindu Succession Act, Pralhad – Defendant No.1 and Suryakant – Plaintiff ceased to be coparceners with effect from 1989 as they succeeded to the estate as tenants in common and not joint-tenants. Resultantly, Pralhad – Defendant No.1 was fully entitled to deal with his share in the suit properties without any restraint. The learned District Judge, thus, committed an error in importing the principle that the gifts were prima facie illegal for being of an undivided interest of the coparcener in the suit properties.

7. A very strong reliance was placed by Mr. Anturkar on a judgment of the Supreme Court in the case of Uttam V/s. Saubhag Singh and Ors.¹, wherein it was enunciated that on a conjoint reading of Sections 4, 8 and 19 of the Hindu Succession Act, 1956, after joint family property has been distributed in accordance with Section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants.

1 (2016) 4 SCC 68

8. Mr. Anturkar also placed reliance on a judgment of the Supreme Court in the case of Gurupad Khandappa Magdum V/s. Hirabai Khandappa Magdum², which was referred to in the decision of Uttam (supra). In the case of Gurupad V/s. Hirabai (supra), it was enunciated that fiction created by Explanation 1 of Section 6 of the Hindu Succession Act (as it stood prior to 2005 Amendment), has to be given its full effect. All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the lifetime of the deceased. The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion. It has to be treated and accepted as a concrete reality.

9. In opposition to this, Mr. Anurag Mishra, learned Counsel for the Respondent, submitted that the contention sought to be canvassed on behalf of the Petitioners is wrongly grounded in facts and unsustainable in law. Attention of the Court was invited to the pleadings in the suit instituted by the Defendants regarding the character of the suit properties and the prayers therein and the manner in which Plaintiff and Defendant No.1 treated the suit properties as joint by executing no objection certificate to permit each other to

² (1978) 3 SCC 383

use the portions of the properties in their respective possession.

10. Mr. Mishra also invited attention of the Court to the findings of the Court in the judgment in RCS No.1273 of 1990 to the effect that the suit properties were ancestral properties and were available for partition and that Defendant Nos.3 to 15 therein, including the Plaintiff and Defendant No.1, failed to establish that, late Shivram had allotted the suit properties i.e. Survey No.211/1 and 203/2B to the deceased Balkrishna. In the said judgment, the Court had, in terms, observed that the Defendants failed to discharge the burden that the suit properties were acquired by late Shivram without the help of joint family funds, and, thus, the nature of the suit properties therein was that of ancestral properties. Therefore, now it is not open for the Defendants to contend that the suit properties are not the joint family properties.

11. Mr. Mishra joined the issue on the import of the Explanation 1 to Section 6 of the Hindu Succession Act, (unamended), by canvassing a submission that the joint family properties do not cease to be joint family properties upon the death of a male Hindu in a situation where Explanation 1 operates. Reliance was placed on a three Judge Bench judgment of the Supreme Court in the case of Vineeta Sharma V/s. Rakesh Sharma and Ors.³, wherein it was observed that the statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956, as originally enacted,

³ (2020) 9 SCC 1

did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female.

12. Mr. Mishra also placed reliance on a decision of the Division Bench of Patna High Court in the case of Santan Narain Tewari V/s. Saran Narain Tewari and Ors.⁴ to buttress his submissions.

13. Mr. Mishra urged that it is well recognized that a gift by a coparcener of his undivided coparcenary interest is not legal. Reliance was placed on the judgments of the Supreme Court in the cases of Thamma Venkata Subbamma V/s. Thamma Rattamma and Ors.⁵ and Baljinder Singh V/s. Rattan Singh⁶. Thus, the Courts below cannot be said to have committed any error in restraining Defendant No.2 from further alienating the suit properties on the strength of such void gift deeds.

14. In rejoinder, Mr. Patil, learned Counsel for the Petitioners, submitted that with the preliminary decree passed in RCS No.1273 of 1990, there was a clear disruption of the joint family properties. The shares of the Plaintiff and Defendant No.1 stood crystalized. Mr. Patil placed reliance on the judgment of the Supreme Court in the case of Radha Bai V/s. Ram Narayan⁷, wherein it

4 1959 SCC Online Pat 111

5 (1987) 3 SCC 294

6 (2008) 16 SCC 785

7 AIR Online 2019 SC 1521

was held that once the share of coparcener is determined, it ceases to be a coparcenary property. The parties in such an event would not possess the property as “joint tenants” but as “tenants in common”.

15. Before advertng to appreciate the legal submissions, it may be appropriate to note the factual backdrop in which the courts below have granted injunction. Such a consideration is necessary as this Court in this Petition is primarily called upon to examine the legality, propriety and correctness of the exercise of discretion to grant injunctive reliefs by the courts below.

16. First and foremost, it is imperative to note the character of the suit property. Though an endeavour was made on behalf of the Petitioners to urge that the suit property was the self-acquired property of Shivram, yet, the judgment of the Civil Court in RCS No.1273 of 1990, which has attained penalty, has concluded the issue by a categorical finding that the properties in the hands of Shivram, the grandfather of the Plaintiff and Defendant No.1, were ancestral properties and all the properties were available for partition. The Civil Court had, thus, concluded that the Plaintiffs therein had proved that the suit properties were ancestral properties and Defendant Nos.3 to 15 failed to prove that the deceased Shivram had allotted the suit properties i.e. Survey Nos.211/1 and 203/2B described in Schedule A under the Vyavasthapatra (family arrangement) dated 20 August 1969 to deceased Balkrishna, Shankar

and Smt. Lakshmibai. In the face of the aforesaid findings, which have attained finality, it is now not open for the Petitioners to contend that the suit properties were self-acquired properties of late Shivram.

17. Secondly, the manner in which Defendant Nos.1 and 2 considered the nature of the suit properties also assumes material significance. In the suit instituted by Defendant Nos.1 and 2, being RCS No.254 of 2018, a categorical assertion was made that the individual shares of Plaintiff No.1 – Defendant No.1 herein, Suryakant, Smt. Hirabai, Pushpalata, Sharada, Yashodabai Balkrishna – Defendant Nos.9 to 15 in RCS No.1273 of 1990, who represented Balkrishna Branch, were not declared by the Court in the said suit. Till date, the suit properties were not divided by meets and bounds, except the land bearing Survey No.211/1, Lohegaon Haveli i.e. suit property 1A in the suit instituted by Defendant Nos.1 and 2. The prayers in the said suit are also of importance. Defendant Nos.1 and 2 sought partition and separate possession of their shares in the suit properties.

18. Thirdly, there are documents which indicate that the Plaintiff and Defendant No.1 had treated the suit properties as undivided properties, and, to allow each other to enjoy the portions in their respective possession, they had executed no objection certificates. What is of significance is the fact that both the Plaintiff and Defendant No.1 acknowledged that they have undivided interest in the suit properties.

19. The aforesaid being the factual position, the manner in which Defendant No.1 professed to gift the properties in favour of Defendant No.2 deserves consideration. Under the Gift Deed dated 23 April 2013, Defendant No.1 professed to gift 1008.8 square meters area and the structure thereon to Defendant No.2, out of Survey No.203/2B admeasuring 2H 21.94 R, the suit property described in paragraph 1B of the plaint in RCS No.254 of 2018 instituted by Defendant Nos.1 and 2. Defendant No.1 claimed that he was the absolute owner of the property sought to be gifted therein.

20. Under the second Gift Deed dated 17 June 2013, Defendant No.1 professed to gift an area admeasuring 1H 97.33R out of Gat No.533 admeasuring 14H 18R; the property described in paragraph No.1C of the plaint in RCS No.254 of 2018, which has been instituted for partition and separate possession of the said suit properties and Survey No.211/1 at Lohegaon. In the second Gift Deed, Defendant No.1 claimed that he had undivided interest in the suit property bearing Gat No.533 and professed to gift an area admeasuring 1H 97.33R.

21. A cumulative reading of the aforesaid Gift Deeds, in the light of the averments in plaint in RCS No.254 of 2018 instituted by Defendant Nos.1 and 2 leads to an inference that what the Defendant No.1 professed to gift to Defendant No.2 was his undivided interest in the properties which formed part of his undivided interest in the suit properties.

22. In the light of aforesaid rather uncontroverted position, the learned District Judge was fully justified in observing that Defendant No.1 could not have lawfully transferred by way of gift his undivided interest in the suit properties. The legal position is well neigh settled that a gift by a coparcener of his undivided interest in the coparcenary property is void. Reliance by Mr. Sharma on the judgment of the Supreme Court in the case of Thamma Venkata Subbamma (supra), which has been consistently followed, is well placed.

23. To salvage the position, an endeavour was made before this Court to draw home the point that Defendant No.1 cannot be said to have gifted to the Defendant No.2 his undivided interest in the suit properties. In fact, upon the death of Balkrishna, father of Plaintiff and Defendant No.1, there was partition and the suit properties ceased to be the joint family properties. Consequently, Plaintiff, Defendant No.1 and other heirs of late Balkrishna inherited the joint family properties as tenants in common and not as a joint tenants.

24. Taking the Court through the provisions of Section 6 of the Hindu Succession Act (as it stood prior to 2005 Amendment) and Section 8 of the Hindu Succession Act, Mr. Anturkar would urge that, upon the demise of Balkrishna, joint family properties ceased to exist. A very strong reliance was placed by Mr. Antuarkar on the decision of the Supreme Court in the case of Uttam V/s. Saubhag Singh and Ors. (supra), wherein the legal position as

regards the joint family property prior to the Amendment of 2005, in the context of the effect of Sections 4, 8 and 19 of the Hindu Succession Act, was expounded. Mr. Anturkar laid special emphasis on the propositions (v) and (vi) enunciated in paragraph No.18 of the said judgment. They read as under :

- “(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.
- (vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with Section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants-in-common and not as joint tenants.”

25. Mr. Anturkar also banked upon the judgment of the Supreme Court in the case of Gurupad Khandappa Magdum (supra), which was followed by the Supreme Court in the case of Uttam v/s. Saubhag Singh and Ors. (supra).

26. At this stage, it may be apposite to note the background facts in which the decisions in the cases of Gurupad Khandappa Magdum (supra) and Uttam V/s. Saubhag Singh and Ors. (supra), were rendered. In the case of Gurupad Khandappa Magdum (supra), a Hindu widow had claimed partition and separate possession of her share in the joint family property which consisted of her husband, herself and their two sons. In that context, it was

held that by applying the principles of notional partition envisaged by Section 6 of the Hindu Succession Act (as it stood then), she would have got $\frac{1}{4}$ share in the joint family property had partition been taken during the life time of her husband. Thus, inevitable corollary of the application of the legal fiction incorporated in Section 6 of the Act, was that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition.

27. In the case of Uttam V/s. Saubhag Singh and Ors. (supra), the Appellant – Plaintiff therein, had instituted a suit against his father and father's three brothers on the footing that the suit property was the ancestral property and that, being a coparcener, he had a right by birth in the said property in accordance with the Mitakshara Law. The suit was decreed by the trial Court. First Appellate Court reversed the decree observing that, when the Plaintiff's grandfather died in 1973, his widow was alive and, thus, grandfather's share was required to be distributed in accordance with Section 8 of the Act, 1956. Resultantly, joint family property was required to be divided in accordance with rules of intestacy and not survivorship. Secondly, no joint family property remained to be divided when the suit for partition was filed. While upholding the said view, the Supreme Court in the case of Uttam V/s. Saubhag Singh and Ors. (supra), held that on the date of the birth of the appellant therein

(1977), the ancestral property not being joint family property, the suit for partition of such property would not be maintainable.

28. The aforesaid pronouncements, however, cannot be construed to mean that fiction of notional partition would bring about real partition. A three Judge Bench of the Supreme Court in the case of Vineeta Sharma (supra), had an occasion to also consider the position as it obtained prior to 2005 Amendment in the matter of notional partition under Section 6 read with Section 8 of the Act, 1956. The Supreme Court referred to the observations in paragraph No.13 in the case of Gurupad Khandappa Magdum (supra), (which was also extracted by the Supreme Court in the case of Uttam V/s. Saubhag Singh and Ors. (supra),) and explained the import of the said observations in the following words :

“103..... The only question involved in the aforesaid matter was with respect to the Explanation of Section 6 and the determination of the widow's share. In that case, the question was not of fluctuation in the coparcenary body by a legal provision or otherwise. Everything remained static. No doubt about it, the share of the deceased has to be worked out as per the statutory fiction of partition created. However, in case of change of body of the coparceners by a legal provision or otherwise, unless and until the actual partition is finally worked out, rights have to be recognized as they exist at the time of the final decree. It is only the share of the deceased coparcener, and his heirs are ascertained under the Explanation to Section 6 and not that of other coparceners, which keep on changing with birth and death.

109. When the proviso to unamended Section 6 of the Act, 1956

Act came into operation and the share of the deceased coparcener was required to be ascertained, a deemed partition was assumed in the lifetime of the deceased immediately before his death. Such a concept of notional partition was employed so as to give effect to Explanation to Section 6. The fiction of notional partition was meant for an aforesaid specific purpose. It was not to bring about the real partition. Neither did it affect the severance of interest nor demarcated the interest of surviving coparceners or of the other family members, if any, entitled to a share in the event of partition but could not have claimed it. The entire partition of the coparcenary is not provided by deemed fiction; otherwise, coparcenary could not have continued which is by birth, and the death of one coparcener would have brought an end to it. Legal fiction is only for a purpose of it serves, and it cannot be extended beyond was held in State of Travancore – Cochin V/s. Shanmugha Vilas Cashewnut Factory⁸; Bengal Immunity Co. Ltd. V/s. State of Bihar⁹; and CED V/s. S. Harish Chandra¹⁰.....”

(emphasis supplied)

29. The Supreme Court went on to enunciate in clear and explicit terms that the statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956, did not bring about the actual partition and disruption of coparcenary. The observations in paragraph 137.4 read as under :

“137.4 The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining

8 AIR 1959 SC 352

9 AIR 1953 SC 333

10 AIR 1955 SC 661

share of deceased coparcener when he was survived by a female heir, of Class I as specified in the schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.”

(emphasis supplied)

30. In any event, in the facts of the case at hand, as noted above, it becomes evident that the Defendant Nos.1 and 2 have not only treated the suit property as joint family property, but also instituted a suit for partition and separate possession of their share in the joint family property, Defendant No.1 professedly executed a gift of his undivided interest in the suit property and proceeded to deal with the suit properties on the premise that the Plaintiff and Defendant No.1 were having undivided interest in the suit properties. Consequently, the contention on behalf of the Defendants that the Defendant No.1 had gifted the suit properties which absolutely belonged to the Defendant No.1 appears debatable.

31. In the totality of circumstances, the order of injunction restraining Defendant No.2 from creating further third party rights in the suit properties appears justifiable as it also protects the subject matter of the suit till the adjudication of the rights and liabilities of the parties. The learned District Judge, thus, cannot be said to have committed any error in repelling the

challenge to the order of injunction passed by the trial Court. Hence, no interference is warranted with the impugned order in exercise of supervisory jurisdiction. The Writ Petition, therefore, deserves to be dismissed.

32. Hence, the following order :

ORDER

(i) The Writ Petition stands dismissed.

(ii) Rule discharged.

(iii) No costs.

(iv) By way of abundant caution, it is clarified that the consideration was confined to examine the legality, propriety and correctness of the impugned order and the trial Court shall not be influenced by any of the observations of this Court while adjudicating the suit.

(N.J.JAMADAR, J.)