A.F.R.
Judgment Reserved on- 02.12.2025
Judgment Delivered on- 17.02.2026
Neutral Citation No. - 2026:AHC:34653

Court No. - 38

Case :- FIRST APPEAL FROM ORDER No. - 2756 of 2025
Appellant :- Radhey Lal Gupta
Respondent :- Shyam Sunder Gupta Alias Ganesh Prasad Gupta And 7 Others
Counsel for Appellant :- Ankur Sharma, Nidhi Agarwal
Counsel for Respondent :- Devansh Misra, Chandra Prakash Kushwaha, Dileep Kumar Singh

Hon'ble Sandeep Jain, J.

1. The instant appeal has been filed by the plaintiff under Order 43 Rule 1(r) read with Section 104 CPC against the impugned order dated 29.8.2025 passed by the court of Additional District Judge(FTC), Mahoba, in O.S. no. 3 of 2025 Radhey Lal Gupta vs. Shyam Sunder Gupta alias Ganesh Prasad Gupta and others, whereby plaintiffs interim injunction application no.6-C2 as well as, application no. 31-C2 for stopping construction on the disputed property, have been rejected.

Plaint case

2. The factual matrix is that the plaintiff filed O.S.no.157 of 2024, which was renumbered as 3 of 2025, with the averments that the disputed property is known as 'Shanker Godam', which is situated in Mohalla Chajmanpura, Mahoba, which was purchased from the income of the HUF of "Kashi Prasad Gaya Prasad", hereinafter referred to as the 'firm', in the name of its partner Seth Gaya Prasad, through registered sale deed executed on 31.8.1943. It was further averred that at that time, the partners of the above firm were Deokinandan,Gaya Prasad, Ram Nath, Ramcharan and Bhavanideen. It was further averred that whatever property was purchased, it was from the income of the above firm. It was further averred that at that time the disputed property was lying in ruins, in Mohalla Kanoongoyan ,which is now known as Mohalla Chajmanpura. It was further averred that currently the disputed property is in the form of a ground in which an old temple of Lord Shanker, and a well is constructed.

3. It was further averred that since the sale deed of the disputed

property was in the name of the father of defendant no.1, as such the defendant no.1 intends to sell the disputed property by misleading persons, whereas, the disputed property is the property of the above HUF. It was further averred that all the partners of the above firm have died and now their legal heirs are joint owners of the property, who intend to sell the property as per their individual wish.

4. It was further averred that the disputed property belongs to the above HUF, in which the plaintiff and defendants have got share, as such, it cannot be sold by a sole person. It was further averred that during the pendency of the suit the disputed property "Shanker Godam"has been sold by defendant no.1 in an illegal manner to defendant No. 7 Mohammed Imtiyaz and defendant No. 8 Chetrapal Singh Yadav through separate sale deeds registered on 30.1.2025, on the basis of which no right title and interest is vested in the above purchasers.

5. It was further averred that the income tax assessment dated 26.7.1978 of the above firm filed by defendant no.1,discloses that the disputed property is of above HUF, and it also discloses the share of defendant no.1 in the property of the HUF as 20%,but still the defendant no.1 intends to sell the disputed property solely and usurp the consideration.

6. The plaintiff has claimed the following reliefs:-
(i)By decree of permanent injunction, the defendant no.1 be restrained from selling the disputed property known as Shanker Godam.
(ii)The registered sale deeds dated 30.1.2025 executed by defendant no.1 in favour of defendant no. 7 and 8 be cancelled and its information be sent to the concerned sub-registrar.
(iii)By decree of permanent injunction granted in favour of the plaintiff against the pendentelite purchasers defendant No. 7 and 8 , they be restrained from making any demolition, construction in the disputed property and also selling it.

Defendant's case

7. The defendant no.1 Shyam Sunder Gupta alias Ganesh Prasad Gupta submitted his written statement in which he admitted that on the basis of sale deed, his father Gaya Prasad was the owner of the disputed property. It was averred that the disputed property was purchased by his father late Gaya Prasad through registered sale deed dated 2.9.1943 from his self earned income, and thereafter, his father became the sole owner in possession of the disputed property. It was averred that subsequently a registered Will was executed by his father, in his favour, and after the death of his father, he is the sole

owner in possession of the disputed property, and in exercise of his right as owner, on 30.1.2025 executed sale deeds of the disputed property in favour of defendant no. 7 and 8 and also handed its possession to them.

8. The defendant has denied that the disputed property belongs to the HUF "Kashi Prasad Gaya Prasad". It was averred that the above firm was constituted on 01.11.1951, whereas the disputed property was purchased on 2.9.1943 from the self earned income of his late father through registered sale deed, which proves that the disputed property was neither the property of HUF nor any plaintiffs right title and interest is vested in it, hence, the plaintiff 's suit was not maintainable and was liable to be dismissed.

9. It was further averred that in the instant suit the member of HUF Jainarain Gupta alias Hindi Bhaiya has been impleaded as defendant no. 2, who has previously filed O.S.no.156 of 2024 in the Court of Civil Judge (Senior Division), Mohaba titled Jainarain Gupta vs. Shyam Sunder Gupta and others and O.S. no. 259 of 1991 in the Court of Civil Judge (Junior Division), Mohaba titled Jainarain Gupta vs. Shyam Sunder Gupta and others, which are pending. It was further averred that in the above mentioned suits, and the instant suit ,the cause of action and the relief claimed is the same as such, the defendant no. 2 should have been impleaded as a co-plaintiff in the instant suit. This shows the collusion between the plaintiff and defendant no. 2. It was further averred that in O.S. No. 259 of 1991, the last Karta of the HUF late Ramcharan Gupta in his affidavit accepted that defendant no.1 was the sole owner of the disputed property, which proves that the disputed property is the self earned property of defendant no.1, in which the plaintiff has got no right title and interest.

10. It was further averred that the plaintiff has filed the photocopy of the estate duty assessment order, which was inadmissible in evidence, in the proceedings of which defendant no.1 was not present, but his cousin Ramswaroop was present, as such any admission made by Ramswaroop was not binding on defendant no.1. It was further averred that since the disputed property during the pendency of the suit has been sold, the plaintiff 's suit has become infructuous. It was further averred that the plaintiff has not filed any documentary evidence such as balance-sheet of the firm, profit and loss account of the firm,etc. to prove that the disputed property belongs to HUF, which prima facie proves that plaintiff has got no right title and interest in the disputed property and the balance of convenience is also not in his favour.

11. The defendant No. 7 and 8 in their written statement have

accepted that the disputed property has been purchased by them through registered sale deed dated 30.1.2025, which is in their possession. It was further averred that the old construction on the disputed property has been demolished and in its place three storeyed building has been constructed, hence the plaintiffs suit for the relief of permanent injunction has become infructuous. It was further averred that father of defendant no.1 was the sole owner of the disputed property, who executed a registered Will dated 01.2.1972 regarding his entire movable and immovable property, which became effective after his death, and on the basis of this Will, defendant no.1 has executed the sale deed of the disputed property in their favour. In view of this, the plaintiff has got no right to obtain the relief of cancellation of the above sale deeds.

12. During the pendency of the suit the plaintiff moved an interim injunction application no.6-C2 on the grounds mentioned in the plaint, which are not being repeated for the sake of brevity. The plaintiff also moved an application 31-C2 for restraining the defendant nos. 1,7 and 8 from demolishing the constructions standing on the disputed property and also stopping the construction work, on the disputed property.

13. The defendants objected to the plaintiffs above applications on the same grounds that were mentioned by them in their written statement, as such, they are not being repeated for the sake of brevity.

Findings of the trial court

14. The trial court by impugned order dated 29.8.2025 concluded that the plaintiff has not produced any evidence regarding when the firm "Kashi Prasad Gaya Prasad" came into existence and duration of its existence, was also not proved. It was also concluded that from the perusal of the true copy of the sale deed dated 31.8.1943 it was not proved that the property was purchased from the income of the firm. It only discloses that the purchaser of the property was Gaya Prasad. It was further concluded that the assessment order of estate duty dated 14.5.1974/20.5.1974 discloses that the return regarding the property of deceased Gaya Prasad was filed by defendant no.1 Shyam Sunder Gupta and the necessary information was provided by cousin of the deceased Ramswaroop. The trial court concluded that the above document discloses that in the disputed property the share of the deceased Gaya Prasad was only 20%. The trial court further concluded that the above order discloses that Gaya Prasad was the coparcener of a HUF Deokinandan Gaya Prasad , which was in existence till assessment year 1952 – 53. On 30.10.1951 there was a partial partition of the above HUF and thereafter, partnership firm came into existence on 01.11.1951, in which there were 5

coparceners. It was further concluded that the above document was a photocopy, which was inadmissible in evidence, and further, in the above proceeding the information was supplied by the cousin of the deceased Gaya Prasad, namely Ramswaroop but when the firm "Kashi Prasad Gaya Prasad" came into existence, was not disclosed. The trial court further concluded that the estate duty assessment order was not a conclusive evidence insofar as the ownership of the disputed property was concerned as such, on the basis of this document, plaintiff cannot be presumed to be having any right title and interest in the disputed property.

15. The trial court further concluded that the plaintiff has filed photocopy of the partnership deed dated 21.8.1972, which discloses that it was executed between Ramnath Gupta son of Kashi Prasad, Babulal Gupta and Ramswaroop Gupta sons of Deokinandan, Radhey Lal Gupta son of Bhawani Deen and Shyam Sunder Gupta son of Gaya Prasad. This deed also discloses that there was previous partnership deed of firm "Kashi Prasad Gaya Prasad" dated February 1967, but the trial court concluded that even on this basis, it was not established that on 31.8.1943 the firm "Kashi Prasad Gaya Prasad" was in existence.

16. The trial court also perused the order dated 09.12.2024 passed by the High Court in Writ B No. 6108 of 2024 and concluded that the dispute related to plot no. 1866, which was purchased through sale deed in the year 1956, which was deemed to be the property of the HUF, against which SLP was pending in the Apex Court.

17. The trial court also concluded that in O.S. No. 259 of 1991 and 156 of 2024, the relief of permanent injunction has been claimed regarding the disputed property 'Shanker Godam', which is similar to the relief claimed in the instant suit, and majority of parties are same in the suits. The trial court concluded that the plaintiff has filed the suit by concealing the above fact.

18. In view of the above facts, the trial court concluded that the plaintiff has failed to make out a prima facie case in his favour. It was also concluded that there was also no balance of convenience in plaintiff's favour and since the disputed property has already been sold by defendant no.1 in favour of defendant no. 7 and 8 on 30.1.2025, and constructions have already been raised on the disputed land,as such, it was concluded that the plaintiff was not entitled to the relief of interim injunction, as well as, for the relief of stopping the construction work on the disputed property. Accordingly, both the applications 6-C2 and 31- C2 were rejected, aggrieved against which, the plaintiff has filed the instant appeal.

Submissions of the learned counsel

19. Learned counsel for the plaintiff-appellant submitted that the plaintiff and the defendant's no.1 to 6 are the legal heir's of the members of the HUF "Kashi Prasad Gaya Prasad" and the disputed property "Shanker Godam" was purchased from the income of the above HUF in the name of its partner, the father of defendant no.1 Gaya Prasad, which was also proved from the documentary evidence submitted by the plaintiff before the trial court, but the trial court has held otherwise. It was further submitted that there was presumption that since Gaya Prasad was the partner of above HUF, as such, the property purchased in his name through sale deed dated 31.8.1943, was purchased from the income of the above HUF, which has not been rebutted by the defendants, as such, the trial court has erred in concluding otherwise. It was further submitted that in the estate duty assessment order regarding the property of the deceased Gaya Prasad submitted on 26.7.1978 by his son defendant no.1, there was an explicit admission that the disputed property was the property of the above HUF in which the share of Gaya Prasad was only 20%, but still the trial court has overlooked the above documentary evidence. It was further submitted that since there was admission on the part of defendant no.1, it was binding on him, and in view of that admission, the defendant no.1 cannot claim himself to be the absolute owner of the disputed property.

20. It was further submitted that in Writ 'B' No. 6108 of 2014, which was decided by this Court by order dated 09.12.2024, it was conclusively held that the disputed property was property of HUF, which has not been rebutted by the petitioner Shyam Sunder Gupta, who is the defendant no.1 in the instant suit, as such, even on the basis of above finding recorded by this Court, it was proved that the disputed property was the property of HUF. Learned counsel submitted that in view of the above evidence on record, the trial court has erred in rejecting the plaintiffs interim injunction application 6-C2 and application 31-C2 for restraining the defendants from raising construction on the disputed property. With these submissions, it was prayed that the appeal be admitted for hearing and allowed on merits.

21. Learned counsel in support of his submission has relied upon the following case law:-

(i)Adiveppa and others vs.Bhimappa and another (2017) 9 SCC 586.

(ii)Ramakant Ambalal Choksi vs. Harish Ambalal Choksi and others 2024 SCC OnLine SC 3538.

(iii)Dalpat Kumar vs. Prahlad Singh (1992) 1 SCC 719.

(iv)Mudigowda Gowdappa Sankh and others vs. Ramchandra Revgowda Sankh by his LR's & others (1969)1 SCC 386.

22. Per contra, learned counsel for the defendant-respondents submitted that the trial court has considered the entire evidence of the plaintiff and has passed a reasoned order, in which there is no perversity, arbitrariness and capriciousness. It was further submitted that the view taken by the trial court is possible, on the basis of evidence on record, as such, even if the appellate court is of the view that, on the basis of evidence another view is possible, even then, the appellate court cannot interfere in the conclusion reached by the trial court. Learned counsel submitted that the parameters of interference by the appellate court in the discretionary order of interim injunction passed by the trial court are well settled, and keeping in view the above parameters, this case is not a fit case, warranting interference by this Court in exercise of its appellate jurisdiction.

23. It was further submitted that the initial burden lied upon the plaintiff to prove that the disputed property was the property of HUF, which was never discharged by the plaintiff, in accordance with law. Learned counsel submitted that on the basis of mere admission, no right title and interest in the property can be created. It was further submitted that on the basis of registered Will of Gaya Prasad dated 01.2.1972, after the death of Gaya Prasad, the disputed property was bequeathed to his son, defendant no.1, and subsequently, his name has also been mutated in the property records but no action has been taken by the plaintiff to challenge that mutation. Learned counsel submitted that the registered sale deed was of 31.8.1943, and nothing prevented the plaintiff from challenging the above sale deed till the filing of the suit in the year 2024, which itself proves that the plaintiff always accepted that the disputed property was the self earned property of late Gaya Prasad. It was further submitted that no declaration of ownership has been claimed regarding the disputed property by the plaintiff as such, the relief of permanent injunction cannot be granted to the plaintiff. It was further submitted that the plaintiff 's suit was barred by limitation and during the pendency of the suit, the disputed property has been sold to defendant no. 7 and 8 and its possession has also been handed to them, who have also raised constructions on it, as such, the plaintiff 's suit for the relief of permanent injunction has become infructuous. It was further submitted that the plaintiff failed to prove that the HUF was in existence at the time of purchasing the disputed property on 31.8.1943.

24. It was further submitted that in the Writ proceeding, the dispute related to plot no.1866, which was purchased through sale deed in the year 1956, which was not at all related to the sale deed of the year 1943, which is the case in the instant suit. Learned counsel submitted that the plaintiff was supposed to prove when the HUF came into existence and the duration of its existence, since after the year 1974,

no documentary evidence regarding the existence/continuation of alleged HUF has been submitted by the plaintiff. It was further submitted that in the plaint, it has not been disclosed, the area of the disputed property,plot/khasra number of the disputed property, whereas the judgment of the High Court in the Writ deals specifically with a particular plot number 1866. It was submitted that the judgment of the High Court in the above-mentioned Writ, does not conclude that the disputed property purchased through sale deed dated 31.8.1943, was the property of HUF.

25. It was further submitted that O.S. no. 259 of 1991 and 156 of 2024 are also pending for disposal between the parties,in which the disputed property and the relief claimed is also same, but the plaintiff has concealed the factum of pendency of above suits, and on this ground alone, the plaintiff was not entitled to the discretionary relief of injunction. It was further submitted that since the plaintiff failed to prove that the disputed property was the property of HUF,as such, no relief could have been granted to him by the trial court, which has not committed any illegality in dismissing the plaintiffs interim injunction application 6-C2 and application 31-C2, for restraining the defendants from raising construction on the disputed property. With these submissions, it was prayed that the appeal is meritless and be dismissed at the admission stage.

26. I have heard Shri Ankur Sharma learned counsel for the appellant, Shri Sanjeev Singh learned Senior Counsel assisted by Shri Dileep Kumar Singh for the respondents no. 7 and 8, Shri Devansh Mishra alongwith Shri Chandra Prakash Kushwaha for the respondent no.1, perused the impugned order and the documents submitted with the appeal.

Conclusion of this Court

27. The plaintiff alleges that there was a HUF "Kashi Prasad Gaya Prasad" and the disputed property "Shanker Godam", which was purchased through sale deed dated 31.8.1943 by late Gaya Prasad, was purchased from the funds of the above HUF, but except the estate duty assessment order of the year 1974, there is no other documentary evidence to prove the existence of the above HUF. If the above alleged HUF is still in existence at the time of filing of the instant suit in the year 2024, then the plaintiff could have filed its income tax returns, partnership deed ,statement of profit and loss account, balance-sheet, statement of assets held by it,etc. to prove its existence, but no such evidence is available on record.

28. The estate duty assessment order relied upon by the plaintiff discloses that Gaya Prasad died intestate on 4.4.1972 and after his

death, estate duty return was filed by his legal heirs, regarding the property held by him. In the assessment proceedings, the nephew of the deceased, Ramswaroop appeared and provided the necessary information to the assessment officer. The assessment order notes that Gaya Prasad was having share in HUF M/S Kashi Prasad Gaya Prasad and M/S Kashi Prasad Deokinandan. It also discloses that previously there was a bigger HUF M/S Deokinandan Gaya Prasad till the assessment year 1952-53, however, on 30.10.1951 there was a partial partition of the said HUF, in which the total capital was divided between 5 brothers and the new partnership firm came into existence on 01.11.1951. The order notes that as per the Wealth tax return filed for assessment year 1971 – 72, the capital invested by the deceased with Messers Kashi Prasad Gaya Prasad was Rs.42,468/-. The order also notes that at the time of his death, Gaya Prasad was having 20% share in M/S Kashi Prasad Gaya Prasad. The question that arises is whether the alleged HUF of "Kashi Prasad Gaya Prasad" is still in existence after the death of Gaya Prasad in the year 1972, because no documentary evidence whatsoever has been produced by the plaintiff to prove its continued existence at the time of filing of the suit in the year 2024.

29. It is further surprising that if the disputed property was of HUF then why the plaintiff remained silent for so many years. It is apparent that after the death of Gaya Prasad in the year 1972, on the basis of his registered Will, the name of his son/defendant no.1 was mutated in the property records, and subsequently on 30.1.2025, he has executed 2 sale deeds of the disputed property in favour of defendant no. 7 and 8 and its possession has also been handed to them, who have raised construction on it.

30. The Apex Court in the case of ***Adiveppa*** (supra) was dealing with a situation where the plaintiff had sought declaration that the suit property described in Schedule 'B' and 'C' was self acquired, property of Schedule 'D' was ancestral, in which the plaintiff had 4/9 th share as members of the family, regarding which no partition had taken place among the family members and as such, the plaintiff also sought partition. The defendants denied the plaintiffs claim and averred that the entire suit properties comprising in Schedule 'B,C and D' were ancestral properties, in which an oral partition had taken place amongst the family members during the lifetime of Hanamappa on 28.10.1993, pursuant to which, all family members were placed in possession of their respective shares. In such circumstances, it was concluded by the Apex Court that-

> "*22.It is a settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal*

presumption continues to operate in the family.The burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self acquired property.

23.In our considered opinion, the legal presumption of the suit properties comprising in Schedule B and C to be also the part and parcel of the ancestral one(Scheduled D) could easily be drawn for want of any evidence of such properties being self acquired property of the plaintiffs. It was also for the reason that the plaintiffs themselves had based their case by admitting the existence of joint family nucleus in respect of Schedule D properties and had sought partition by demanding 4/9 th share.

24.In our considered opinion, it was, therefore, obligatory upon the plaintiffs to have proved that despite existence of jointness in the family, properties described in Schedule B and C was not part of ancestral properties but were their self acquired properties. As held above, the plaintiffs failed to prove this material fact for want of any evidence."

31. It is evident that in the case of **Adiveppa** (supra) there was an admission on the part of the plaintiff that property of Schedule D was ancestral and property of Schedule B and C was self acquired, which was denied by the defendants who averred that all the property of Schedule B,C and D was joint, regarding which an oral partition has already taken place, and the family members are in possession of their respective share. In this backdrop, it was concluded by the Apex Court that since there was an admission on the part of the plaintiff that Schedule D property was joint, as such, the other property of Schedule B and C ,which was claimed by the plaintiff as self earned, due to lack of evidence on the part of plaintiff, would also be treated as joint property.

32. It is evident that the fact situation in the instant case is entirely different from ***Adiveppa*** (supra) because the plaintiff has alleged that the disputed property was purchased from the funds of HUF "Kashi Prasad Gaya Prasad", which has been denied by the defendants on the ground that the sale deed dated 31.8.1943 of the disputed property, was in the name of Gaya Prasad, which has been subsequently bequeathed to defendant no.1 in the year 1972. It is the case of the defendants that the disputed property was purchased from the self income of Gaya Prasad. In view of the above facts, no reliance can be placed on the case law of ***Adiveppa*** (supra).

33. The Apex Court in the case of ***Mudigowda Gowdappa Sankh*** (supra), while considering whether there is presumption that a Hindu family merely because it is joint, possesses any joint property, held as under:-

"6.... The burden of proving that any particular property is joint family property, is, therefore, in the first instance upon the person who claims it as coparcenery property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self acquisition to affirmatively make out that the property was acquired without any aid from the family estate....."

34. It is apparent that in the instant case the burden is upon the plaintiff to prove that there was adequate income/nucleus of the HUF "Kashi Prasad Gaya Prasad" in the year 1943, through which Gaya Prasad could have purchased the disputed property, but this burden has not been prima facie discharged by the plaintiff. There is no admission on the part of the defendants that the disputed property was purchased from the income of the above HUF "Kashi Prasad Gaya Prasad", in fact, the very existence of HUF in the year 1943 has been denied by the defendants.

35. The plaintiff has also relied upon the decision of this Court dated 09.12.2024 in Writ- B no. 6108 of 2014 Shyam Sunder Gupta vs. Board of Revenue and others, in which the matter related to rights conferred by registered sale deed that 3.9.1956 executed in favour of the petitioner's father Gaya Prasad, regarding plots no. 1709 and 1866. The order mentions that petitioner averred that after the death of his father in the year 1972, the HUF came to an end, all properties were divided between 5 family members and the new proprietary ship firm was constituted in the year 1972, which the petitioner failed to prove. This Court concluded that the disputed plot number 1866 was the property of HUF of "Kashi Prasad Gaya Prasad" and has accordingly, dismissed the writ petition. Learned counsel of the parties admit that the above order of the High Court has been challenged by filing SLP before the Apex Court, which is pending for disposal.

36. It is apparent that in the above Writ petition the dispute was regarding plot number 1866 only. In the instant case, the plaintiff has not mentioned the plot/khasra number of the disputed property, it's area, as such, the above decision of this Court in the above Writ petition, has got no relevancy to the facts of this case. On the basis of the above decision in the Writ, it cannot be concluded that the disputed property which was purchased through sale deed dated 31.8.1943 is the property of HUF "Kashi Prasad Gaya Prasad".

37. The Apex Court in the case of the ***Ambika Prasad Thakur vs. Ram Ekbal Rai AIR 1966 SC 605, Avtar Singh vs. Gurdial Singh (2006)12 SCC 552, Ramchandra Sakharam Mahajan vs. Damodar Trimbak AIR 2007 SC 2577 and Union of India vs. Ibramuddin (2012) 8 SCC 148***, has considered inter alia the effect of admission by a party in respect of title. It was held that title cannot pass by a mere admission.

<u>When the Appellate Court can interfere in these matters</u>

38. The Apex Court in the case of ***Wander Ltd. and another vs. Antox India Pvt. Ltd. 1990 Supp SCC 727***, while discussing the scope of interference by the appellate courts while hearing appeals against injunction orders passed by the trial court, held as under :-

> *"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)*
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> *"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."*

39. The Apex Court in the case of ***Ramakant Ambalal Choksi vs. Harish Ambalal Choksi and others 2024 SCC OnLine SC 3538***, has analysed the principles regarding grant of injunction and interference

by the appellate court in the discretion exercised by the trial court. The relevant paragraphs read as under:-

> *"26. The principles of law explained by this Court in Wander [Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727] have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.*
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> *27. In Neon Laboratories Ltd. v. Medical Technologies Ltd. [Neon Laboratories Ltd. v. Medical Technologies Ltd., (2016) 2 SCC 672 : (2016) 2 SCC (Civ) 190] , this Court held that the appellate court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.*
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> *28. In Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan [Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan, (2013) 9 SCC 221 : (2013) 4 SCC (Civ) 285] , this Court emphasised on the principles laid down in Wander and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39CPC. The basis for substituting the view of the trial court should be mala fides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below: (SCC p. 230, para 20)*
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> *"20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the learned trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to*

have said that the appellate court was wrong in its conclusions what is sought to be emphasised is that as long as the view of the trial court was a possible view the appellate court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd. ”

29. This Court in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd. [Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd., (2023) 1 SCC 634 : (2023) 1 SCC (Civ) 301] observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial Judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

30. This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd. [Monsanto Technology LLC v. Nuziveedu Seeds Ltd., (2019) 3 SCC 381 : (2019) 2 SCC (Civ) 158] , observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

31. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well-settled principles governing the scope of jurisdiction of the appellate court under Order 43CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in Wander case .

32. In Anand Prasad Agarwalla v. Tarkeshwar Prasad [Anand Prasad Agarwalla v. Tarkeshwar Prasad, (2001) 5 SCC 568] , it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.

33. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is “a prima facie case” in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which

needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (See Dalpat Kumar v. Prahlad Singh [Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719] .)

34. Any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [Moffett v. Gough, (1878) 1 LR Ir 331] , the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [Godfrey v. Godfrey, 106 NW 814 : 127 Wis 47 (1906)] , the Court defined "perverse" as "turned the wrong way"; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

35. The expression "perverse" has been defined by various dictionaries in the following manner:

(a) Oxford Advanced Learner's Dictionary of Current English, 6th Edn.

Perverse — Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

(b) Longman Dictionary of Contemporary English — International Edn.

Perverse — Deliberately departing from what is normal and reasonable.

(c) The New Oxford Dictionary of English — 1998 Edn.

Perverse — Law (of a verdict) against the weight of evidence or

the direction of the Judge on a point of law.

(d) New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)

Perverse — Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

(e) Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.

Perverse — A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

36. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See Damodar Lal v. Sohan Devi [Damodar Lal v. Sohan Devi, (2016) 3 SCC 78 : (2016) 2 SCC (Civ) 36] .)

37. Seen in light of the aforesaid settled position of law, we are of the clear view that in the facts of the present case, the High Court overstepped its appellate jurisdiction under Order 43CPC and substituted its own view for the one taken by the trial court without giving any categorical finding as to why the order of the trial court could be said to suffer from any perversity, capriciousness, arbitrariness, mala fides or having been passed in ignorance of the settled principles governing the grant of injunction under Order 39CPC."

40. It is apparent from the above law laid down by the Apex Court in ***Wander Ltd*** (supra) and ***Ramakant Ambalal Choksi*** (supra) that the Appellate Court while hearing appeals against the order of the trial court granting or refusing injunction can only interfere where the impugned order is malafide, capricious, arbitrary or perverse. If the view taken by the trial court was a possible view, the Appellate Court was not supposed to substitute its view. It is further apparent that if as per the reasonable man, the conclusion reached by the trial court on facts was possible, there is no perversity. If not, the finding is perverse. It was further held by the Apex Court that inadequacy of evidence or a different reading of evidence is not perversity.

41. From the analysis made hereinbefore, it is apparent that, the trial court has not erred in concluding that there was neither any prima facie evidence to prove the existence of HUF "Kashi Prasad Gaya Prasad" in the year 1943 nor the disputed property was purchased

from the funds/income/nucleus of the HUF.

42. It is further apparent that the trial court has not erred in concluding that merely on the basis of admission by Ramswaroop in proceedings before the estate duty assessment officer, it cannot be presumed that the disputed property was of HUF "Kashi Prasad Gaya Prasad". The trial court has further not erred in concluding that merely on the basis of the above assessment order, the ownership of disputed property cannot be decided. It is also apparent that merely on the basis of admission, the title of disputed property cannot be presumed in favour of the plaintiff.

43. It is further apparent that the trial court has rightly concluded that the matter in the Writ before the High Court related to plot number 1866, which was purchased through sale deed in the year 1956, which is not relevant in the instant suit.

44. It is further apparent that the trial court has rightly concluded that previously O.S. no. 259 of 1991 and 156 of 2024 have also been filed by defendant No.2(of the instant suit) against defendant no.1(of the instant suit) and other's, in which the disputed property is the same and the relief claimed was also the same and the main parties were also same, but this fact was not disclosed by the plaintiff.

45. It is further apparent that the trial court has correctly concluded that since the disputed property has been sold to the defendant no.7 and 8, who are in its possession and who have raised construction on it, as such, neither the plaintiff has proved his prima facie case nor the balance of convenience lies in his favour.

46. It is also apparent that the plaintiff has neither claimed declaration of his rights nor partition of his alleged share in the disputed property, but has simply claimed the relief of permanent injunction and cancellation of registered sale deeds dated 30.1.2025 executed during the pendency of the suit by defendant no.1 in favour of defendant no.7 and 8. It is apparent that the plaintiff has failed to prove that prima facie he is having any right title and interest in the disputed property, as such the trial court has not committed any illegality in rejecting the plaintiffs interim injunction application 6-C2 and application 31-C2 for restraining the defendants from raising any construction on the disputed property.

47. For the aforesaid reasons, this Court is of the opinion that there is no perversity in the impugned order of the trial court. The view taken by the trial court is a possible view, which is in accordance with the evidence on record and prevailing law, which cannot in any manner whatsoever be termed capricious, arbitrary or malafide, as such,

keeping in view the parameters of interference laid down by the Apex Court in ***Wander Ltd*** (supra) and ***Ramakant Ambalal Choksi*** (supra), this Court while exercising its appellate jurisdiction cannot interfere in the impugned order and substitute its own view. The trial court has rightly concluded that the plaintiff has failed to prove his prima-facie case and the balance of convenience is also not in his favour.

48. **Accordingly, the instant appeal has got no merit, and is hereby dismissed at the admission stage**. Consequently, the impugned order dated 29.8.2025 of the trial court in O.S.no.3 of 2025 stands affirmed.

49. The trial court is directed to decide the instant suit preferably within a period of six months from the date a certified copy of this order is produced before it, without affording unnecessary adjournment to either of the party, on merits, in accordance with law.

50. The observations made by this Court in the instant order are only for the purpose of deciding this appeal and the trial court will not be influenced and bound by it, and is at liberty to form its own opinion, on the basis of pleadings and evidence adduced by the parties during trial, in accordance with law.

Order Date:- 17.02.2026
Jitendra/Himanshu/Mayank

(Sandeep Jain, J.)

Digitally signed by :-
MAYANK KUMAR SHARMA
High Court of Judicature at Allahabad