

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

INTERIM APPLICATION NO.1499 OF 2021

IN

SUIT NO.108 OF 2021

Hriday Niraj Mehta

...Applicant/
Ori. Plaintiff

vs.

Umesh Jayantilal Mehta and Others

...Defendants

Mr. Nitin Thakker, Senior Advocate a/w. Mr. Rohan Sawant, Mr. Yatish Pandya, Ms. Vaibhavi Parchake i/b. Pandya and Poonawala, for the Plaintiff.

Mr. Cyrus Ardshir a/w. Nutan Patel, Mr. Mahesh Menon i/b. Mahesh Menon & Co., for Defendant Nos. 1 to 4.

Mr. Sharan Jagtiani, Senior Advocate i/b. Purnanand and Co., for Defendant No. 7.

Ms. Kirtida Chandarana a/w. Ms. Henna Shah i/b. Mahernosh Humranwala, for Defendant No. 8.

CORAM : N. J. JAMADAR, J.

RESERVED ON : 20th OCTOBER, 2021

PRONOUNCED ON : 15th FEBRUARY, 2022

ORDER

1. The applicant/plaintiff has preferred this application for interim relief in the nature of restraining the defendants from dealing with, disposing off, alienating, encumbering and/or creating third party rights in any manner whatsoever in or over the residential premises being Flat Nos. 201 and 202, 2nd Floor, Silver

Solitaire CHS Ltd, situated at Plot No. 99, T.P.S. III, Tilak Road, Ghatkopar (E), Mumbai 77. (the suit flats), for appointment of Court Receiver and also restraining the defendants from preventing the plaintiff from residing in the suit flats.

2. The applicant has instituted the suit for declaration that the Gift Deeds dated 20th November, 2014 in respect of suit flats are *void ab-initio*, illegal and non-binding on the plaintiff, and that Niraj Jayantilal Mehta HUF and its members/coparceners including the plaintiff, are entitled to 50% undivided share in the suit flats and for an equitable partition and vacant, peaceful possession of the suit flats and mesne profit etc.

3. The plaintiff is the son of defendant Nos. 5 and 6. Defendant No. 1 is the real brother of defendant No. 5. Defendant No. 2 is the wife of defendant No. 1 and defendant Nos. 3 and 4 are the daughter and son of defendant Nos. 1 and 2. The plaintiff is a coparcener in a Hindu Undivided Family namely Niraj Jayantilal Mehta- HUF consisting of himself and his parents being defendant Nos. 5 and 6. Defendant Nos. 1 and 4 are the members of Umesh Jayantilal Mehta - HUF. The two HUFs jointly owned the suit flats.

4. The plaintiff's grand-father Jayantilal Mehta had established business 'inter alia, of trading glass bottles. On account of the unscrupulous practices of defendant No. 1, the business suffered huge losses. Defendant Nos. 1, 2, 5 and 6 became heavily indebted. Proceedings were instituted by the banks and financial institutions. While the plaintiff was still a minor, a suit being, Suit No. 2283 of 2011, was filed by the plaintiff, through next friend, and defendant No. 3 for herself and as guardian of defendant No. 4, against defendant Nos. 1, 2, 5 and 6. In the said suit Notice of Motion No. 2759 of 2011 taken out by the plaintiffs for interim relief. Defendant Nos. 1 and 5 made a categorical statement that neither the said HUF nor the Defendant Nos. 1 and 5 had any intention whatsoever to create only third party rights/ interest in the suit flats. The said stand was reiterated in the written statement filed by defendant Nos. 1,2,5 and 6 on 12th October, 2012.

5. The plaintiff claimed to have learnt that defendant No. 1, using his extreme undue influence and dominant position got defendant No. 5, the plaintiff's father, to execute instruments purported to be Gift Deeds, as Karta of Niraj Jayantilal Mehta-HUF in respect of suit flats in favour of defendant No. 3 alone. Defendant No. 1 has played fraud on the members of the HUF and got the

purported Gift Deeds executed in favour of defendant No. 3. Thus, a notice was addressed to defendants No. 1 to 6 on 19th November, 2020. A bald reply was sent on 25th November, 2020 denying the contentions of the plaintiff, on the premise that a detailed reply would follow. In the exchange of notices that followed, it transpired that two Gift Deeds in respect of flat Nos. 201 and 202 were executed and registered with the Registrar of Assurances on 21st November, 2014.

6. The plaintiff was thus constrained to institute the suit as the Gift Deeds in favour of defendant No. 3 purportedly executed by defendant Nos. 1 and 5 in the capacity of Karta of respective HUF were void and illegal. Defendant Nos. 1 and 5 had no authority in law to execute the Gift Deeds particularly in respect of the interest of the plaintiff, who was then a minor, without obtaining previous permission of the Court. Neither there was any legal necessity. Nor the alienation was for the benefit of the estate of the minor.

7. After the institution of suit, when the application for interim relief was taken up for ad-interim reliefs defendant Nos. 1 to 4 informed the Court that the suit flats were sold in the month of December, 2020. The plaintiff avers the said action of defendant No.

3 in alienating the suit flats, after being served with the legal notices, was mala fide and with the sole object of defeating the legitimate claim of the plaintiff. Thus, the plaintiff impleaded defendant No. 7, the transferee, and defendant No. 8, the society, as party defendants to the suit. The plaintiff sought further declaration that agreement for sale dated 10th December, 2020 executed by defendant No. 3 in favour of defendant No. 7 is *void ab initio* and not binding upon the plaintiff and Niraj Jayantilal Mehta-HUF. In the alternative, a direction was sought against defendant Nos. 1 to 4 to deposit 50% of the sale proceeds along with interest at the rate of 18% p.a. in the Court. Injunctive reliefs were sought against defendant Nos. 7 and 8 as well.

8. The defendant Nos. 1 to 4 have resisted the application by filing affidavit in reply. It was contended that the plaintiff is not entitled to any interim relief as the plaintiff was guilty of *suppressio veri* and/or *suggestio falsi*. At the outset, it was contended that defendant No. 3 became the absolute owner of the suit flat and in that capacity executed conveyance in favour of defendant NO. 7 on 7th December, 2020. Pursuant thereto, possession of the suit flats was handed over to defendant No. 7. Despite being fully cognizant of the said developments, the plaintiff has instituted this suit which is

a creature of afterthought. The defendant No. 5, the father of the plaintiff had executed the Gift Deed voluntarily, in the year 2014. Thus the challenge to the Gift Deeds was stated to be barred by law of limitation. Defendant No. 5, according to defendant Nos. 1 to 4, is the driving force behind the institution of this suit, with an oblique motive.

9. Defendant No. 8 – society has also filed an affidavit in reply. It is contended that the defendant NO. 8 has transferred the suit flats in the name of defendant No. 3 on the strength of the Gift Deeds executed in the year 2014 and, subsequently, the suit flats were transferred in the name of defendant No. 7 pursuant to the application submitted by defendant No. 7 on the strength of the conveyance executed by defendant No. 3 in favour of defendant No. 7. Defendant NO. 8- society further asserted that defendant NO. 7 has been in position of the suit flats.

10. An affidavit in re-joinder is filed by the plaintiff controverting the contentions of the defendant Nos. 1 to 4 in the affidavit in reply.

11. I have heard Mr. Nitin Thakker, learned senior counsel, for the Plaintiff, Mr. Cyrus Ardhesir learned counsel for Defendant

Nos. 1 to 4, Mr. Sharan Jagtiani, learned senior counsel for Defendant No. 7 and Ms. Kirtida Chandarana, learned counsel for Defendant No. 8. The learned counsels have taken me through the averments in the plaint, the interim application and the affidavits in reply and rejoinder. I have also perused the documents placed on record.

12. Mr. Thakker, learned senior counsel, would urge that in the backdrop of the indisputable position that the joint status of Niraj Jayantilal Mehta and Umesh Jayantilal Mehta, HUFs was severed by expression of an unequivocal intention with the institution of the Suit No. 2283 of 2011 by the plaintiff and defendant Nos. 3 and 4, the Gift Deeds allegedly executed in favour of defendant No. 3 by defendant Nos. 1 and 5 are clearly invalid. On the strength of such Gift Deeds, defendant No. 3 did not acquire absolute right, title and interest in the suit flats. As the interest of the plaintiff in the suit flats was sought to be alienated after the plaintiff had made known his unequivocal intention to seek partition of the joint family properties, defendant Nos.1 to 4 can not take benefit of provisions contained in section 6 of the Hindu Minority and Guardianship Act, 1956 (the Act) on the premise that Defendant No. 5, the father of the plaintiff, disposed of the undivided interest of the plaintiff.

13. As a second limb of the submission, Mr. Thakker would urge that the execution of conveyance by defendant No. 3 in favour of defendant No. 7, after the exchange of notices, betrays the intent to defeat the legitimate claim of the plaintiff. Since defendant No. 7 professed to purchase the suit flats despite the lis pendence having been registered, in the context of Suit No. 2283 of 2011, and without even publishing public notice inviting objections to the then proposed transaction, defendant No. 7 cannot be said to be a bonafide purchaser for value without notice. In the circumstances, according to Mr. Thakker, the plaintiff is entitled to interim relief, lest the plaintiff would suffer irreparable loss.

14. In opposition to this, Mr. Ardshir, the learned counsel for the defendant Nos. 1 to 4 would urge that the very premise of the suit is flawed. On the one hand, the plaintiff asserts that the joint status was disrupted with the institution of Suit No. 2283 of 2011 and, on the other hand, the plaintiff has claimed 50% undivided interest in the suit flats. This claim of the plaintiff is contrary to the case of severance of joint status set up by the plaintiff. Mr. Ardshir further submitted that the fact that the plaint is conspicuously silent about the role of defendant No. 5, despite defendant No. 5 having executed the Gift Deeds in favour of

defendant No. 3, in the capacity of Karta of Niraj Jayantilal Mehta – HUF, indicates that the suit has been instituted at the behest of defendant No. 5. The stoic silence for almost six years after the execution of Gift Deeds in favour of defendant No. 3 and the suit flats having been transferred pursuant thereto in the name of defendant No. 3, renders the claim for equitable relief unworthy of acceptance. In the circumstances, the plaintiff is not entitled to any of the interim reliefs, urged Mr. Ardhesir.

15. Mr. Jagtiani, leaned senior counsel for defendant No. 7 submitted that the action in the instant suit is plainly malafide. Contesting the submission of Mr. Thakker that there was severance of the joint status with the institution of Suit No. 2283 of 2011, Mr. Jagtiani stoutly submitted that, the said suit appeared to be collusive and instituted with the object of insulating the residential premises of the HUFs from being proceeded against by the creditors of defendant Nos. 1 and 5. Moreover, since the said suit came to be dismissed for want of prosecution, in the year 2017, it can not be said that there was a severance of joint status. Mr. Ardhesir and Mr. Jagtiani were in unison in submitting that taking undue advantage of attainment of majority by the plaintiff, defendant No. 5 and his family members have raked up the dispute.

16. To begin with, it may be apposite to note uncontroverted facts. There is no dispute about the relations inter-se between defendant Nos. 1 and 5 and over the fact that Niraj Jayantilal Mehta and Umesh Jayantilal Mehta HUFs which were formed by defendant Nos. 1 and 5. It is indisputable that Niraj Jayantilal Mehta and Umesh Jayantilal Mehta, HUFs had jointly acquired the suit flats. The institution of the suit No. 2283 of 2011 by the plaintiff through his next friend and defendant No. 3 for herself and in the capacity of guardian of defendant No. 4 for declaration and partition is also not in contest. It is incontrovertible that the defendant Nos. 1 and 5 executed the Deeds on 20th November, 2014 whereunder the suit flats came to be gifted to defendant No. 3. The material on record further indicates that the defendant No. 3, in turn, executed a conveyance in favour of defendant No. 7, on 10th December, 2020. There is not much controversy over the fact that the plaintiff attained majority in the month of March, 2020.

17. In the backdrop of the aforesaid uncontroverted facts, the question of legality and validity of the Gift Deeds in favour of defendant No. 3 is at the heart of the matter. Mr. Ardheshir, submitted that it is well recognized that the Karta is not enjoined to obtain prior permission of the Court under section 8(2) of the Act

and is entitled to dispose of undivided interest of the minor in a joint family property. Once this position is appreciated, according to Mr. Ardhesir, the very edifice of the plaintiff's case that the Gift Deeds in favour of defendant No. 3 by defendant Nos. 1 and 5 are invalid, falls through.

18. Mr. Thakker joined the issue by canvassing a submission that the aforesaid proposition would not govern the facts of the case in hand as there was severance in the joint status and, thus, it cannot be said that on the date of execution of the Gift Deeds, the plaintiff had undivided interest in the joint family property. In order to lend support to this submission, Mr. Thakker placed a strong reliance on the judgment of the Supreme Court in the case of **Jalaja Shedthi and Others vs. Lakshmi Shedthi and Others**¹. In the said case, the Supreme Court held that on the demand for partition there is a division in status, and though partition by metes and bounds may not have taken place, the family can thereafter never be considered to be an undivided family nor can the interest of a coparcener be considered to be an undivided interest. Emphasis was laid on the following observations of the Supreme Court, in paragraph 12, of the said judgment.

1 (1973) 2 Supreme Court Cases 773.

“The first thing to be noticed is that on the demand for partition there is a division in status, and though partition by metes and bounds may not have taken place, that family can thereafter never be considered as an undivided family, nor can the interest of a coparcener be considered to be an undivided interest. It is a well-established principle in, the Hindu Law that a member of a joint Hindu family has a right to, intimate his definite and unambiguous intention to the other members of the joint family that he will separate himself from family and enjoy his share in severalty. Such an unequivocal intention communicated to the, others will amount to a division-in status and on ,such division he will have a right to get a de facto division of his specific share of the joint family property, in which till then all of them had an undivided coparcenary interest, and in which none of them could claim that he had any right to any specific part thereof. Once the decision to divide has been unequivocally expressed and clearly intimated to his co- sharers, whether or not the other co-sharers agree, an immediate severance of the joint status is effected arid his right to obtain and possess the share to which be is admittedly entitled be-Comes specified.”

19. Reliance was also placed on the another judgment of the Supreme Court in the case of **Phoolchand and Another vs. Gopal Lal**². In this case also the Supreme Court emphasized that immediately on the filing of the suit there was severance of status among the members of the joint Hindu family. Mr. Thakker invited the attention of the Court to the averments in the plaint in the Suit No. 2283 of 2011 to bolster up the submission that the plaintiff and defendant Nos. 3 and 4 herein had claimed partition and separate possession of their respective shares in Niraj Jayantilal Mehta and

2 AIR 1967 SC 1470.

Umesh Jayantilal- HUFs. This constituted a clear and unequivocal intention to seek partition of the joint family properties. Resultantly, there was division of the joint status.

20. A conjoint reading of the provisions contained in sections 6, 8 and 12 of the Act, indicates that natural guardian of the property of Hindu minor is enjoined to seek permission of the Court to dispose of any immovable property of the minor. However, where the minor has undivided interest in the joint family property, the previous permission of the Court under section 8 of the Act for disposing of the undivided interest of the minor in the joint family property is not required. In other words, in view of the provisions contained in section 6 and 12, the permission envisaged under section 8 of the Act would not be required where a joint family property is alienated by Karta involving an undivided interest of minor in the said joint Hindu family property. A useful reference in this context can be made to the judgment of the Supreme Court in the case of **Sri Narayan Bal & Others vs. Sridhar Sutar & Ors**³. The observations in paragraph 5 are material and hence, extracted below.

5. With regard to the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need be viewed in a single glimpse, simultaneously in conjunction with each other. Each

3 (1996) 8 Supreme Court Cases 54.

provision, and in particular Section 8, cannot be viewed in isolation. If read together the intent of the legislative in this beneficial legislation becomes manifest. Ordinarily the law does not envisage a natural guardian of the undivided interest of a Hindu minor in joint family property. The natural guardian of the property of a Hindu minor, other than the undivided interest in joint family property, is alone contemplated under Section 8, where under his powers and duties are defined. Section 12 carves out an exception to the rule that should there be no adult member of the joint family in management of the joint family property, in which the minor has an undivided interest, a guardian may be appointed; but ordinarily no guardian shall be appointed for such undivided interest of the minor. The adult member of the family in the management of the Joint Hindu Family property may be a male or a female, not necessarily the Karta. The power of the High Court otherwise to appoint a guardian, in situations justifying, has been preserved. This is the legislative scheme on the subject. Under Section 8 a natural guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under sections 6 to 12 of the Act, the previous permission of Court u/s.8 of disposing of undivided interest of the minor in the joint family property is not required. The joint Hindu family by itself is a legal entity capable of acting through its Karta and other adult members of the family in management of the joint Hindu family property. Thus section 8 in view of the express terms of Sections 6 and 12, would not be applicable where a joint Hindu family property is sold/disposed of by the Karta involving an undivided interest of the minor in the said joint Hindu family property. The question posed at the outset therefore is so answered.

(emphasis supplied)

21. In the case of **Vasantrao Gulabrao Thakre and Ors. vs. Sudhakar Wamanrao Hingankar and Ors.**⁴ on which reliance was placed by Mr. Ardheshir the aforesaid position has been reiterated.

4 MANU/MH/0861/2018

22. In the light of the aforesaid exposition of law, the controversy revolves around the question as to whether the plaintiff continued to have undivided interest in the joint family property or there was severance of status on the date of execution of the Gift Deeds by defendant Nos. 1 and 5 in favour of defendant No. 3. From the perusal of the averments in the plaint in Suit No. 2283 of 2011 one gets an impression that the said suit was instituted to protect the family residence from being proceeded against, as the defendant Nos. 1 and 5 were then heavily indebted and the creditors were pursuing recoveries. It was categorically asserted in the said suit that only the suit flats were unencumbered and, thus, there was an apprehension that the defendants may create third party rights /interest in the suit flats to pay all the secured and unsecured creditors.

23. It is true that the said suit came to be eventually dismissed on 10th April, 2017 for want of prosecution. Nonetheless the fact remains that in the said suit the defendant Nos. 1 and 3 therein/ defendant Nos. 1 and 5 herein made a categorical statement in affidavit in reply and the written statement that the defendants did not intend to create any third party rights or transfer the right, title and interest of the plaintiff in the suit flats in the capacity of Karta

of the said HUFs or otherwise.

24. At this juncture, whatever be the driving factor for the institution of Suit No. 2283 of 2011, which was primarily for declaration of the rights of the plaintiff and defendant Nos. 3 and 4 in the suit flats and partition thereof, it would be rather difficult to draw an inference that the institution of the said suit did not manifest an intention to sever the joint status. It is imperative to note that defendant No. 3 herein had sought partition for herself and defendant No. 4. The institution of the suit on behalf of the plaintiff by the next friend may be questioned. But it cannot be discounted that defendant No. 3 had also sought partition. In this view of the matter prima facie, the claim of the defendant Nos. 1 to 4 that the families continued to be joint despite manifestation of clear intention, becomes contentious.

25. The submission on behalf of defendant Nos. 1 to 4 that the time lag of almost six years in challenging the Gift Deeds executed in favour of defendant No. 3 becomes critical, may carry some substance. At this stage, the Court cannot be oblivious to the fact that, in the stressed circumstances in which the HUFs allegedly

found themselves, the disposal of the residential premises by Niraj Jaytilal Mehta HUF in favour of defendant No. 3, purportedly out of natural love and affection, is a matter which cannot be readily acceded to. Conversely, any endeavour on the part of the defendant Nos. 1 to 4 to demonstrate that there was some tacit understanding pursuant to which Gift Deeds were executed in favour of defendant No. 3 erodes the very basis of Gift Deeds.

26. At this juncture, the consequences which may emanate once the plaintiff succeeds in avoiding the transaction as being hit by provisions contained in section 8 of the Act for want of prior permission of the Court, deserve to be noted. Disposal of immovable property, by a natural guardian, in contravention of section 8 of the Act, is voidable at the instance of the minor. On the successful exercise of the power to avoid the alienation, the alienation may become void since its inception qua the interest of the plaintiff. In the backdrop of the aforesaid consequences, which may entail in the event the plaintiff succeeds, the question of interim relief to be granted to the plaintiff is required to be considered.

27. I find substance in the submissions of Mr. Thakker that the

defendant No. 3 alienated the suit flats in favour of defendant No. 7 society, post-haste. The material on record indicates that a legal notice was addressed by the plaintiff to the defendants on 19th November, 2020. A denial of the contentions therein was issued by the defendants No. 1 to 4 on 25th November, 2020 reserving the right to address detailed reply thereto. Such detail reply was issued on 7th December, 2020. It cannot be said to be a matter of sheer coincidence that, after a couple of days only i.e. on 10th December, 2020, the defendant No. 3 executed the agreement for sale of the suit flats in favour of defendant No. 7. It would suffice to note that the defendants gave no inkling of impending transaction between defendant Nos. 3 and 7.

28. The crucial question which crops up for consideration is whether there is material to indicate that defendant No. 7 is, prima facie, not a bonafide purchaser for value. Indisputably, Gift Deeds were executed and registered in the month of November, 2014. In the record of defendant No. 8 society, suit flats were transferred in the name of defendant No. 3. There is material to indicate that defendant No. 7 has parted with consideration of 8 Crores and the defendant No. 7 has been placed in possession of the suit flats.

29. In this view of the matter, I am not persuaded to agree with the submission on behalf of the plaintiff that failure to give public notice on the part of defendant No. 7 justifies an inference that defendant No. 7 is not a bonafide purchaser for value. Thus, I am not inclined to grant the relief in the nature of prohibitory order against defendant No. 7 and the appointment of the Court Receiver. Since, defendant No. 7 appears to be, prima facie, in possession of the suit flats, the plaintiff is not entitled to the relief of injunction against the defendants from preventing the plaintiff from residing in the suit flats. Yet, the issue of balancing equities confronts the Court.

30. Indisputably, the plaintiff was minor on the date of execution of the Gift Deeds in favour of defendant No. 3. Prima facie, the legality and validity of the said Gift Deeds is required to be decided on the touchstone of the legal competence of defendant No. 5 to execute the said Gift Deeds so as to dispose of the interest of the plaintiff, especially in the backdrop of the allegations of severance of the joint status with the institution of the suit No. 2283 of 2011. It is true, the defendant Nos.5 & 6 have not appeared before the Court. Nonetheless, the challenge to the execution of the Gift Deeds would warrant consideration irrespective of the stand of defendant Nos. 5

and 6. At any rate, the right of the plaintiff to proceed against the sale proceeds qua his share can hardly be contested. It is contextually relevant to note that by way of amendment, the plaintiff has prayed for an order and decree directing the defendant Nos. 1 to 4 to pay 50% of the sale proceeds of the suit flats to the plaintiff.

31. The defendant No. 3 has admittedly received consideration of Rs. 8 Crores. In my view, it would, therefore, be in the fitness of things to direct the defendant No. 3 to either deposit a certain portion of sale consideration received by her or furnish security, to secure the interest of the plaintiff. In the circumstances of the case, in view of the substantive prayer in the plaint, despite there being no corresponding prayer in the interim application, in my considered view, it would be expedient in the interest of justice to obtain a deposit or security so that equities can be worked out at the final disposal of the suit. Lest the plaintiff would be left in the lurch. From this stand point, the balance of convenience tilts in favour of the plaintiff.

Hence, the following order:

ORDER

- 1] The application stands partly allowed.
- 2] The defendant No. 3 Siddhi Umesh Mehta shall either deposit a sum of Rs. 1,35,00,000/- (One Crore Thirty Five Lakhs) in this Court or furnish a bank guarantee of the same amount and keep the same alive till the disposal of the suit, within a period of eight weeks from today.
- 3] In the event the defendant No. 3 deposits the amount of Rs. 1,35,00,000/- (One Crore Thirty Five Lakhs) the Prothonotary and Senior Master of this Court shall invest the same in an interest bearing deposit account.
- 4] Costs in cause.

(N. J. JAMADAR, J.)