

learned counsel for the appellant, Sri Anoop Trivedi, learned Senior Counsel, assisted by Sri Devansh Mishra and Sri Shivam Tiwari, learned counsel for the respondent Nos. 1 to 3 and Sri Ajay Sengar, learned counsel for the respondent No. 4.

2. Present appeal has been filed with the prayer to set aside the judgment and order dated 16.09.2024 and decree dated 19.09.2024 passed by learned Civil Judge(Senior Division), Jalaun at Orai in Original Suit No. 356 of 2023(Km. Sunita Vs. Smt. Manju and Others) and also to allow the Temporary Injunction Application No. 6C-2.

3. With the consent of learned counsel for the parties, the appeal is being decided at the admission stage itself.

4. Brief facts of the case are that a suit for partition being Original Suit No. 356 of 2023 was filed by the appellant-plaintiff on 11.10.2023 against the respondents-defendants for partition along with 6C-2 application. After argument, 6C-2 application was rejected vide impugned order 16.09.2024. Hence the present appeal.

5. Sri M.C. Chaturvedi, learned Senior Counsel, appearing for the appellant submitted that impugned order has been passed basically on two grounds. The first ground is that appellant-plaintiff has concealed certain facts and she has not disclosed the fact regarding agreement to sale executed by her before filing of the suit, therefore, she was not with clean hands. The second ground was that she has not impleaded the subsequent purchasers as defendants in the suit.

6. So far as first ground is concerned, learned Senior Counsel has

argued that agreement to sale was executed without right of possession and till date sale deed has not been executed, therefore, right of no coparcener is affected. He next submitted that non disclosure of such fact would not affect the nature and consequence of suit. Therefore, this cannot said to be a concealment of fact. So far as second ground is concerned, he argued that total eight sale deeds were executed by the respondent-defendant during the pendency of the suit and appellant-plaintiff was having no knowledge of that, therefore, there is no occasion for the appellant-plaintiff to implead the subsequent purchasers as party in the suit. Immediately after knowing about the execution of the sale deed, she has brought those documents along with records before the court. It is also his argument that appellant-plaintiff is dominus litis i.e. master of suit, therefore, she cannot be forced to implead anyone as defendant in the suit. He next submitted that appellant-plaintiff has not claimed any relief against the persons in favour of whom, sale deeds were executed, therefore, they are not the necessary party in the suit. He also submitted that subsequent purchasers are having full right to file impleadment application under Order 1 Rule 10 CPC, therefore, there is no occasion to consider their grievance in this partition suit. He next submitted that the suit filed by the appellant-plaintiff is a partition suit between the family members and in case subsequent purchasers are impleaded, the nature and consequence of the suit would be changed. Therefore, subsequent purchasers are not the necessary party in the suit. He also submitted that certain objections under Section 6 of the Hindu Succession Act, 1956 were raised and the court has opined that it can only be decided during the course of trial after leading the evidence, therefore, this issue

cannot be raised at this stage. In support of his contention, he placed reliance upon the judgment of Hon'ble Apex Court in the matters of *Civil Appeal Nos. 1180-1181 of 2025 (H. Anjanappa & Ors. Vs. A. Prabhakar & Ors., Gurmit Singh Bhatia Vs. Kiran Kant Robinson and Ors.:(2020) 13 SCC 773, Kasturi Vs. Iyyamperumal and Ors.: (2005) 6 SCC 733, Vineeta Sharma Vs. Rakesh Sharma and Ors: AIR 2020 SC 3717, and this Court in M/s Sri Bankhadi Nath Developers Pvt. Ltd. Vs. Dharmendra Kumar Rathore and others: 2024(3) ADJ 723).*

7. Sri Anoop Trivedi, learned Senior Counsel, appearing for the respondents, opposed the aforesaid submission and submitted that agreement to sale was executed by the appellant-plaintiff prior to filing of the suit and also one more agreement to sale through power of attorney was executed during the pendency of suit and these facts are concealed by the appellant-plaintiff, therefore, she is not entitled for any relief from this Court. In support of his contention, he placed reliance upon the judgment of Hon'ble Apex Court in the matter of *Amar Singh Vs. Union of India and Others: (2011) 7 SCC 69 and Ambalal Sarabhai Enterprises Limited Vs. KS Infraspace LLP Limited and Another: (2020) 5 SCC 410.*

8. He next submitted that once the sale deed has been executed in favour of other persons, they are the necessary party and it is required on the part of the plaintiff to implead them as defendants. He next submitted that so far as dominus litis is concerned, under Section 52 of the Transfer of Property Act any property sold out during the pendency of suit shall be subject to the outcome of the suit, therefore, in case

subsequent purchaser are not required to be impleaded as defendant, there is no occasion to grant interim protection in light of Section 52 of the Transfer of Property Act. On this Issue, he placed reliance upon the judgment of Hon'ble Apex Court in the matter of *H. Anjanappa(Supra).*

9. He also submitted that interim injunction against the co-sharers cannot be granted and further, while granting the interim injunction conduct of the party, balance of convenience and irreparable loss is required to be seen. He next submitted that in present case, undisputedly, conduct of the party is not fair and further, interim injunction cannot be granted against the co-sharers, therefore, there is no prima facie case, balance of convenience and irreparable loss of the appellant-plaintiff.

10. I have considered the submission advanced by learned counsel for the parties and perused the record as well as judgments relied upon.

11. The undisputed facts of the case is that the suit filed by the appellant-plaintiff is the partition suit against the family members and appellant-plaintiff has executed one agreement to sale prior to filing of the suit, another after filing of suit through power of attorney and this fact has not been disclosed in the suit. Similarly, in the objection to 6C-2 application, there is no disclosure of execution of sale deeds by the respondents-defendants.

12. Now, the basic question before the Court is to decide as to whether during the pendency of partition suit, interim protection is required to be granted or not.

13. I am coming to the first argument of learned counsel for the

appellant-plaintiff about the non disclosure of certain facts. If non disclosure of these facts would not change the nature and consequence of the suit, that cannot be a ground for rejecting the 6C-2 application coupled with this fact that in the present case, both the parties have concealed the facts.

14. I have also perused judgment of Apex Court in the matter of *Amar Singh(Supra)*. Relevant paragraph of the said judgment are being quoted hereinbelow:

“53. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with “unclean hands” and are not entitled to be heard on the merits of their case.

54. In Dalglish v. Jarvie {2 Mac. & G. 231,238}, the Court, speaking through Lord Langdale and Rolfe B., laid down:

“It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward.””

55. In Castelli v. Cook {1849 (7) Hare, 89,94}, Vice Chancellor Wigram, formulated the same principles as follows:

“A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly

to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as has broken faith with the Court, the injunction must go.”

56. In the case of Republic of Peru v. Dreyfus Brothers & Company {55 L.T. 802,803}, Justice Kay reminded us of the same position by holding:

“...If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made.”

57. In one of the most celebrated cases upholding this principle, in the Court of Appeal in R. v. Kensington Income Tax Commissioner {1917 (1) K.B. 486} Lord Justice Scrutton formulated as under:

“and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- facts, now law. He must not misstate the law if he can help it –the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have been fully and fairly stated to it, the Court will set aside any

action which it has taken on the faith of the imperfect statement.”

58. *It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by principles of ‘uberrima fide’.*

59. *The aforesaid requirement of coming to Court with clean hands has been repeatedly reiterated by this Court in a large number of cases. Some of which may be noted, they are: Hari Narain v. Badri Das, Welcome Hotel and others v. State of A.P. and others, G. Narayanaswamy Reddy (Dead) by LRs. and another v. Government of Karnatka and another, S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and others, A.V. Papayya Sastry and others v. Government of A.P. and others, Prestige Lights Limited v. SBI, Sunil Poddar and others v. Union Bank of India, K.D.Sharma v. SAIL and others, G. Jayashree and others v. Bhagwandas S. Patel and others, Dalip Singh v. State of U.P. and others.*

60. *In the last noted case of Dalip Singh (supra), this Court has given this concept a new dimension which has a far reaching effect. We, therefore, repeat those principles here again:*

“1. For many centuries Indian society cherished two basic values of life i.e. “satya”(truth) and “ahimsa (non-violence), Mahavir, Gautam Budha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue

in the preindependence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. *In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”*

However, this Court is constrained to observe that those principles are honoured more in breach than in their observance.

61. *Following these principles, this Court has no hesitation in holding that the instant writ petition is an attempt by the petitioner to mislead the Court on the basis of frivolous allegations and by suppression of material facts, this court had issued notice and also subsequently passed the injunction order which is still continuing.*

15. *From the perusal of judgment quoted hereinabove, it is apparently clear that for concealment of fact or*

misstatement, there must have been intention to mislead the Court or obtain some order fraudulently. Again para 61 of the aforesaid judgment transpires that that appeal was made by the appellant to mislead the Court on the basis of frivolous allegation and suppression of material facts, but so far as present case is concerned, even if the facts are not disclosed, that would not change in nature of the suit for the very simple reason that it is a partition suit between the family members. Therefore, this judgment would not be applicable on the facts of the present case and the same would not come in the rescue of respondents-defendants.

16. I have also perused judgment of Hon'ble Apex Court in the matter of **Ambalal Sarabhai(Supra)**. Relevant paragraph of the said judgment are being quoted hereinbelow:

“23. *WanderLtd.(supra)* prescribes a rule of prudence only. Much will depend on the facts of a case. It fell for consideration again in *Gujarat Bottling Co. Ltd. vs. Coca Cola Co., (1995) 5 SCC 545*, observing as follows: “47....Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for”

17. From the perusal of aforesaid judgment, it is apparently clear that the

facts of the case are entirely different. It is recorded in this judgment that the fact is having bearing upon the consequences of the suit, which is not in present case. Hence, this judgment would also not benefit the respondents-defendants.

18. Now, I am coming to the another issue as to whether subsequent purchasers are necessary party or not. This issue has been considered by the Hon'ble Apex Court in the matter of **H. Anjanappa(Supra)**. Relevant paragraph of the aforesaid judgment are being quoted hereinbelow:

“58. *From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge:*

i. *First, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order I Rule 10 CPC or under Order XXII Rule 10 CPC, as a general principle;”*

ii. *Secondly, a transferee pendente lite is not entitled to come on record as a matter of right;*

iii. *Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party;*

iv. *Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record;*

v. *Fifthly, where a transferee pendente lite does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;*

vi. *Sixthly, merely because such transferee pendente lite does not come on record, the concept of him (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;*

vii. *Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and,*

viii. *Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come record on his own or at the instance of either party to the suit.*

19. From careful perusal of para 58 of the aforesaid judgment, it is clear that a transferee pendente lite is not a necessary party as a matter of right. It depends upon the facts and circumstances of the case. So far as present case is concerned, certainly it is a partition suit, therefore, subsequent purchasers are not necessary party in such proceeding.

20. Now, I am coming to the issue of dominus litis. This issue has come up before the Hon'ble Apex Court in the matter of **Gurmit Singh Bhatia(Supra)**, **Kasturi(Supra)** and this Court in **M/s Sri Bankhadi Nath Developers(Supra)**. The Court has held that appellant-plaintiff is a dominus litis and he cannot be forced to

add party against whom he does not want to contest the case unless there is provision under the rule of law. In the present case, no relief is sought against the subsequent purchasers, therefore, plaintiff-appellant cannot be forced to implead them as defendants.

21. There is one more issue regarding Section 6 of the Hindu Succession Act, 1956 denying the legal heirship of appellant-plaintiff.

22. This issue was very well considered by the Hon'ble Apex Court in the matter of **Vineeta Sharma(Supra)**. Relevant paragraph of the aforesaid judgment is being quoted hereinbelow:

“29. In Ghamandi Ram (supra), the formation, concept and incidents of the coparcenary were discussed thus:

“5. According to the Mitakshara School of Hindu Law all the property of a Hindu joint family is held in collective ownership by all the coparceners in a quasi-corporate capacity. The textual authority of the Mitakshara lays down in express terms that the joint family property is held in trust for the joint family members then living and thereafter to be born (see Mitakshara, Ch. I, 1-27). The incidents of co-parcenership under the Mitakshara law are: first, the lineal male descendants of a person up to the third generation, acquire on birth ownership in the ancestral properties of such person; secondly, that such descendants can at any time work out their rights by asking for partition; thirdly, that till partition each member has got ownership extending over the entire property, conjointly with the rest; fourthly, that as a result of such coownership the possession and enjoyment of the properties

is common; fifthly, that no alienation of the property is possible unless it be for necessity, without the concurrence of the coparceners, and sixthly, that the interest of a deceased member lapses on his death to the survivors. A coparcenary under the Mitakshara School is a creature of law and cannot arise by Act of parties except in so far that on adoption the adopted son becomes a coparcener with his adoptive father as regards the ancestral properties of the latter. In *Sundaranam Maistri v. Harasimbhulu Maistri and Another*, ILR 25 Mad 149 at 154.”

Mr Justice Bhashyam Ayyangar stated the legal position thus:

“The Mitakshara doctrine of joint family property is founded upon the existence of an undivided family, as a corporate body (*Gan Savant Bal Savant v. Narayan Bhond Savant*) [ILR 7 Bom 467] and Mayne’s ‘Hindu Law and Usage’, (6th edition, Paragraph 270) and the possession of property by such corporate body. The first requisite therefore is the family unit; and the possession by it of property is the second requisite. For the present purpose, female members of the family may be left out of consideration and the conception of a Hindu family is a common male ancestor with his lineal descendants in the male line, and so long as that family is in its normal condition viz. the undivided state — it forms a corporate body. Such corporate body, with its heritage, is purely a creature of law and cannot be created by Act of parties, save in so far that, by adoption, a stranger may be affiliated as a member of that corporate family.”

6. Adverting to the nature of the property owned by such a family the learned Judge proceeded to state:

“As regards the property of such family, the ‘unobstructed heritage’ devolving on such family, with its accretions, is owned by the family, as a corporate body, and one or more branches of that family, each forming a corporate body within a larger corporate body, may possess separate ‘unobstructed heritage’ which, with its accretions, may be exclusively owned by such branch as a corporate body.”

23. From perusal of aforesaid judgment, it is apparently clear that learned judge has decided this issue in light of judgment of *Vineeta Sharma(Supra)* therefore, co-parcenership of the appellant-plaintiff cannot be denied.

24. Now, I am coming to the issue as to whether in the partition suit, interim protection is required or not. This issue came up before the Apex Court in the matter of *Gujarat Bottling Co. Ltd. And Ors. Vs. Coca Cola Company and ors. (1995) 5 SCC 545*. Relevant paragraph of the aforesaid judgment is being quoted hereinbelow:

“46. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its

alleged violation are both contested and uncertain and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies. [see: Wander Ltd. & Anr. v. Antox India P. Ltd., MANU/SC/0595/1990. In order to protect the defendant while granting an interlocutory injunction in his favour the Court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

25. Again this issue was considered by the Apex Court in the matter of **Zenith Mataplast P. Ltd. Vs. State of Maharashtra and Ors.: (2009) 10 SCC 388**. Relevant paragraph of the said judgment are being quoted hereinbelow:

“23. Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally,

to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. (vide Anand Prasad Agarwalla v. State of Assam vs. Tarkeshwar Prasad & Ors. AIR 2001 SC 2367; and Barak Upatyaka D.U. Karmachari Sanstha (2009) 5 SCC 694)

24. Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no strait-jacket formula can be laid down. There may be a situation wherein the defendant/respondent may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted (vide M. Gurudas & Ors. Vs. Rasaranjan & Ors. AIR 2006 SC 3275; and Shridevi & Anr. vs. Muralidhar & Anr. (2007) 14 SCC 721.

25. Grant of temporary injunction, is governed by three basic principles, i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini trial at the stage of grant of temporary injunction (Vide S.M. Dyechem Ltd. Vs. M/s. Cadbury (India) Ltd., AIR 2000 SC 2114; and Anand Prasad Agarwalla (supra).

26. In Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., AIR 1999 SC 3105, this court observed that the other

considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions are as below :

(i) Extent of damages being an adequate remedy;

(ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason thereof ;

(iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;

(iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case the relief being kept flexible;

(v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.”

27. In *Dalpat Kumar & Anr. Vs. Prahlad Singh & Ors.*, AIR 1993 SC 276, the Supreme Court explained the scope of

aforsaid material circumstances, but observed as under:-

“The phrases ‘prima facie case’, ‘balance of convenience’ and ‘irreparable loss’ are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts rest eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience.”

28. This Court in *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hira Lal*, AIR 1962 SC 527 held that the civil court has a power to grant interim injunction in exercise of its inherent jurisdiction even if the case does not fall within the ambit of provisions of Order 39 Code of Civil Procedure.

29. In *Deoraj vs. State of Maharashtra & Ors.* AIR 2004 SC 1975, this Court considered a case where the courts below had refused the grant of interim relief. While dealing with the appeal, the Court observed that ordinarily in exercise of its jurisdiction under Art.136 of the Constitution, this Court does not interfere with the orders of interim nature passed by the High Court. However, this rule of discretion followed in practice is by way of just self-imposed restriction. An irreparable injury which forcibly tilts the balance in favour of the applicant, may persuade the Court even to grant an interim relief though it may amount to granting the final relief itself. The Court held as under:-

“The Court would grant such an interim relief only if satisfied that

withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice.”

30. Such a course is permissible when the case of the applicant is based on his fundamental rights guaranteed by the Constitution of India. (vide *All India Anna Dravida Munnetra Kazhagam vs. Chief Secretary, Govt. of Tamil Nadu & Ors.* (2009) 5 SCC 452)

31. In *Bombay Dyeing & Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group & Ors.* (2005) 5 SCC 61, this Court observed as under:-

“The courts, however, have to strike a balance between two extreme positions viz. whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event, the losses sustained by the affected parties thereby may not be possible to be redeemed.”

32. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. *prima facie case, balance of convenience*

and irreparable loss. The delay in approaching the Court is of course a good ground for refusal of interim relief, but in exceptional circumstances, where the case of a party is based on fundamental rights guaranteed under the Constitution and there is an apprehension that suit property may be developed in a manner that it acquires irretrievable situation, the Court may grant relief even at a belated stage provided the court is satisfied that the applicant has not been negligent in pursuing the case.”

26. This issue has also been considered by this Court in the matter of ***Saurabh Gupta Vs. Smt. Archana Gupta and others: 2024(3) ADJ 241(LB).*** Relevant paragraphs of the aforesaid judgment are being quoted herein below:

“4. The crux of the matter is that the appellant filed a Civil Suit No.23 of 2023, impleading the respondents as defendants, for a declaration that he is the co-sharer of 1/4th part of the property in dispute as the property belongs to joint family property because it was purchased by the father of the appellant, who is also the husband of respondent no.1 in the name of respondent no.1. In the suit above, the specific plea was taken that respondent no.1 was the house maker and did not have any independent source of income. Through a sale deed dated 20.10.1986, the appellant's father purchased the property in dispute from Ram Ratan Gupta. It was further mentioned in the plaint that the appellant also made construction over that plot, and thereafter, the entire family has been running a business therein, and this complex is also known as R.C. Complex. Therefore, an application under Order 39 Rule 1 and 2 C.P.C. was filed during the pendency of the present suit with a prayer

that the respondent may be restrained from transferring the same. In the written statement, respondents have stated that the aforesaid property has been gifted by respondent no.1 to respondent no.2. The application above for interim injunction has been dismissed by the Court below vide order dated 25.07.2023.

13. Law relating to granting interim injunction during the pendency of suit is well-settled which was reiterated by the Apex Court in several judgements. In the case of *Neon Laboratories Ltd. vs Medical Technology Ltd. and others*; 2016 (2) SCC 672, Hon'ble Apex Court observed as under;

"However, it is now entrenched in our jurisprudence that the appellate Court is not flimsily, whimsically or lightly interfere in the exercise of discretion by a sub-ordinate court unless such exercise is palpably frivolous. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence."

14. Hon'ble Apex Court in the case of *Zenith Metaplast Pvt. Ltd. vs State of Maharastra and others*; 2009 (10) SCC 388, while laying down the law relating to granting the injunction, observed that the interim order is a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become infructuous or a fait accompli before the final hearing. It also further observed that the grant of a temporary injunction is governed by three basic principles, i.e. prima facie case, balance of convenience, and irreparable injury, which must be considered in a proper perspective in the facts and circumstances of the particular case. For

reference para 30, 31 and 37 of the above judgments are quoted as below;

*"30. Interim order is passed based on prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial (vide *Anand Prasad Agarwalla v. Tarkeshwar Prasad* [(2001) 5 SCC 568] , and *State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha* [(2009) 5 SCC 694 : (2009) 2 SCC (L&S) 109]).*

31. Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no straitjacket formula can be laid down. There may be a situation wherein the respondent-defendant may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted (vide *M. Gurudas v. Rasaranjan* [(2006) 8 SCC 367 : AIR 2006 SC 3275] and *Shridevi v. Muralidhar* [(2007) 14 SCC 721]). Grant of a temporary injunction is governed by three basic principles, i.e. prima facie case, balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction [vide *S.M.*

Dyechem Ltd. v. Cadbury (India) Ltd. [(2000) 5 SCC 573 : AIR 2000 SC 2114] and Anand Prasad Agarwalla [(2001) 5 SCC 568] , SCC p. 570, para 6].

37. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss."

15. Be that as it may, here the appellant is claiming the declaration of only 1/4th share in the property in dispute on the ground that the property belongs to a joint Hindu family and the property was purchased during lifetime of father of the appellant in the name of respondent no.1, who was homemaker. This Court under Section 114 of Indian Evidence Act may presume the existence of fact that the property purchased by Hindu husband in the name of his spouse, who is homemaker and does not have independent source of income, will be the property of family, because in common course of natural event Hindu husband purchases a property in the name of his wife, who is homemaker and does not have any source of income for the benefit of family. Therefore, in such case prima facie the property is joint Hindu family property and protection of property from transferring to a third party is necessary, consequently this Court finds that the Court below, while passing the impugned order dated 25.04.2023 has not applied his mind despite being a prima facie case, and in such case protection is

necessary against further transferring the property or changing the nature of same, if same is not protected, there are chances the property may be transferred or nature of property may be changed in that case even if the appellant's suit is decreed, then he will suffer irreparable loss and injury."

27. Once again the very same issue came up before the Apex Court in the matter of **Sk. Golam Lalchand Vs. Nandu Shaw and Ors. AIR 2024 SC 4193**. Relevant paragraph of the said judgment is being quoted hereinbelow:

"24. The suit property which is undivided is left with the co-owners to proceed in accordance with law to get their shares determined and demarcated before making a transfer."

28. This issue again engaged the attention of Hon'ble Apex Court in the matter of **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and Ors. MANU/SC/1270/2024** and the Court has held as under:

"45. Quite often, in these types of litigations, it is sought to be argued that an injunction restraining the defendant from transferring the suit property was absolutely unnecessary as no post-suit transfer by the defendant can adversely affect the result of the suit because of the provisions of Section 52 of the T. P. Act whereunder all such transfers cannot but abide by the result of the suit. It is true that the doctrine of lis pendens as enunciated in Section 52 of the T. P. Act takes care of all pendente lite transfers; but it may not always be good enough to take fullest care of the plaintiffs interest vis-a-vis such a transfer. We may give one appropriate illustration of a suit for specific

performance of contract based on an agreement of sale. In a suit wherein the plaintiff prays for specific performance and if the defendant is not restrained from selling the property to a third party and accordingly a third party purchases the same bona fide for value without any notice of the pending litigation and spends a huge sum for the improvement thereof or for construction thereon, the equity in his favour may intervene to persuade the Court to decline, in the exercise of its discretion, the equitable relief of specific performance to the plaintiff at the trial and to award damages only in favour of the plaintiff. It must be noted that Rule 1 of Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of lis pendens as enacted in Section 52 of the T. P. Act was regarded to have provided all the panacea against pendente lite transfers, the Legislature would not have provided in Rule 1 for interim! injunction restraining the transfer of suit property. Rule 1 of Order 39, in our view, clearly demonstrates that, notwithstanding the Rule of lis pendens in Section 52 of the T. P. Act, there can be occasion for the grant of injunction restraining pendente lite transfers in a fit and proper case. (See: Sm. Muktakesi Dawn and Ors. v. Haripada Mazumdar and Anr. reported in AIR 1988 Cal 25)."

29. From the perusal of aforesaid judgments, it is apparently clear that for granting interim injunction, three factors are required to be considered i.e. prima facie case, balance of convenience and irreparable loss. So far as present case is concerned, undisputedly, it is a case of partition suit and plaintiff and defendants both are having equal right over the property in dispute unless it is divided as a consequence of partition suit. Therefore, to protect the property,

undisputedly, there is prima facie case and balance of convenience in favour of plaintiff as well as defendants also. Though there is protection of Section 52 of Transfer of Property Act, but in case interim injunction is not granted, that will create multiplicity of litigations. Therefore, at this stage, in case property is protected till the disposal of partition suit, that would be in the interest of larger justice.

30. So far as irreparable loss is concerned, transfer of property during the pendency of litigation may not be irreparable loss, but certainly would create unnecessary litigations resulting into so many complications in execution of decree granted in the present partition suit. There is full likelihood of raising new construction or alteration over the property in dispute by subsequent purchaser and that may absolutely change the nature of property resulting into irreparable loss. Therefore, interim protection is required till the disposal of partition suit.

31. From the conduct of the parties, it is apparently clear that on one hand, plaintiff has executed two agreement to sale and on the other hand, defendants have executed eight sale deeds, therefore, in case interim injunction is not granted, the whole purpose of filing of partition suit would be defeated and even in case of final decree, it would be next to difficult to get the decree executed.

32. Apex Court in so many judgments referred hereinabove has taken the same view that under such facts, it is required on the part of the Court to grant interim protection to protect the property.

33. So far as order impugned is concerned, it has only been passed basically on two grounds, the first is

concealment of fact and the second is non impleadment of subsequent purchasers, which is absolutely unsustainable in view of discussion made hereinabove.

34. Therefore, in view of facts and circumstances of the case, impugned judgment and order dated 16.09.2024 and decree dated 19.09.2024 passed in Original Suit No. 356 of 2023 are bad and hereby set aside.

35. Both the parties are directed to maintain the status quo as on date with regard to nature of property. Both the parties are further directed not to execute any agreement to sale or sale deed and also not create third party right till the final disposal of Original Suit No. 356 of 2023.

36. With the aforesaid observation, Appeal is hereby **allowed**.

37. No order as to costs.

(2025) 6 ILRA 83
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 11.06.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

P.I.L. No. 638 of 2025

Deebandhu Samgra Swasthya Avam
Siksha Shodh Sansthan ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Counsel for the Petitioner:
 Moti Lal Yadav, Arti Rawat

Counsel for the Respondents:

A.S.G.I., C.S.C., Syed Mohammad Haider Rizvi

Public Interest Litigation – Maintainability – Requirement of disclosure of credentials – Rule 1(3-A), Chapter XXII, Allahabad High Court Rules, 1952 – PIL filed by a Trust through its Chairman challenging alleged irregularities in NEET-2025 Physics paper – No disclosure of credentials in precise and specific manner – No material to show espousal of cause of any marginalized section of society – Absence of authorization/resolution of Trust permitting Chairman to institute proceedings – Petition held not maintainable. (Paras 23, 28 to 32)

HELD:

The requirement of disclosure of credentials from the petitioner is indeed necessary to bring on record the complete background of the person who is coming before the Court. This information helps to establish the petitioner's credibility, locus standi, and his genuineness. Providing credentials also demonstrates that the petitioner has the necessary expertise, knowledge and understanding of the gravity and seriousness involved in the matter. The said information should not be vague and indefinite. The word 'credentials' connotes the qualities and the experience of a person that make him suitable for doing a particular job. (Para 23)

Thus, this Court has no hesitation to note that the petitioner has not disclosed credentials in the manner as required under the relevant Rules. Even otherwise, there is nothing on record to indicate that the petitioner has preferred the instant petition espousing the cause of any member of a disadvantageous section of the society or any person, who is downtrodden or for certain disabled person, who is unable to approach the Court or that the matter in question relates to infringement or denial of any basic human right to such marginalized section of the society which enables the petitioner to espouse their cause. (Para 28)

In the case of Balwant Singh Chauhal (Supra), the Hon'ble Supreme Court has observed that to