

Ramakant Ambalal Choksi
v.
Harish Ambalal Choksi & Others
(Civil Appeal No. 13001 of 2024)
22 November 2024
[J.B. Pardiwala and R. Mahadevan, JJ.]

Issue for Consideration

Whether the High Court was justified in allowing the appeal filed by the defendants-respondents holding that no case for grant of interim injunction was made out and thus, vacating the order granting injunction in favour of the plaintiffs-appellants.

Headnotes[†]

Code of Civil Procedure, 1908 – Order 43, 39 – Appeals from Orders – Appellate jurisdiction u/Or.43 – Scope:

Held: 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 appellate court under Order 43 – Appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in the Wander case – On facts, the High Court overstepped its appellate jurisdiction under Order 43 of the CPC 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, malafides or having been passed in ignorance of the settled principles governing the grant of injunction under Order 39 – High Court ought to have limited itself to adjudicating the correctness of the order of the trial court on the settled principles of law and should not have taken into consideration any other extraneous matters, more particularly when the suit was pending for adjudication on merits before the trial court – Impugned order passed by the High Court set aside. [Paras 32, 39, 48]

Transfer of Property Act, 1882 – s.52 – Doctrine of lis pendens – Code of Civil Procedure, 1908 – Order 39, Rule 1 – Grant of interim injunction restraining pendente lite transfers:

Digital Supreme Court Reports

Held: Doctrine of lis pendens in Section 52 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 – Rule 1 of Order 39 provides for interim injunction restraining the alienation or sale of the suit property and, if the doctrine of lis pendens in Section 52 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 clearly demonstrates that notwithstanding the Rule of lis pendens in Section 52, there can be occasion for the grant of injunction restraining pendente lite transfers in a fit and proper case – On facts, with regard to the nature of dispute between the parties and the materials on record, the property should not change hands any further – Defendants to maintain status quo as regards the suit property as on date and shall not create any further encumbrances over the same in any manner – Any further transfer of the suit property pending the final disposal of the suit shall be subject to lis pendens under Section 52 irrespective of the fact whether such lis pendens has been duly registered by the plaintiffs with the competent authority or not. [Paras 45, 47, 49, 50]

Code of Civil Procedure, 1908 – Order 39 – Temporary injunctions and interlocutory orders – Grant of temporary injunctions – Principles governing – Explained. [Paras 33, 34]

Words and Phrases – “Perverse” – Meaning, definition – Discussed. [Paras 35, 36, 37]

Case Law Cited

Wander Ltd. v. Antox India P. Ltd. (1990) Supp. SCC 727 – relied on.

Printers (Mysore) v. Pothan Joseph [1960] 3 SCR 713 : (1960) SCC Online SC 62; Neon Laboratories Ltd. v. Medical Technologies Ltd. [2015] 10 SCR 684 : (2016) 2 SCC 672; Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan [2013] 3 SCR 359 : (2013) 9 SCC 221; Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd. [2022] 3 SCR 1173 : (2023) 1 SCC 634; Monsanto Technology LLC v. Nuziveedu Seeds Ltd. [2019] 1 SCR 145 : (2019) 3 SCC 381; Anand Prasad Agarwal v. Tarkeshwar Prasad (2001) 5 SCC 568; Dalpat Kumar v. Prahlad Singh [1991] Supp. 3 SCR 472 : (1992)

Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Others

1 SCC 719; Damodar Lal v. Sohan Devi and others [2016] 1 SCR 607 : (2016) 3 SCC 78 – referred to.

Sm. Muktakesi Dawn and Ors. v. Haripada Mazumdar and Anr.
AIR 1988 Cal 25; Promotha Nath Roy v. Jagannath Kisore Lal Singh Deo (1912) 17 Cal LJ 427 – referred to.

Charles Osenton & Co v Johnston 1942 A.C. 130; Evans v. Bartlam 1937 A.C. 473; Hadley v. London Bank of Scotland (1865) 3 De GJ & S 63; Moffett v. Gough (1878) 1 LR 1r 331; Godfrey v. Godfrey 106 NW 814 – referred to.

Books and Periodicals Cited

Dr. S. C. Banerji's Tagore Law Lectures on Specific Relief (2nd Edition, page 592); Fry's Treatise on Specific Performance (6th Edition).

List of Acts

Code of Civil Procedure, 1908; Transfer of Property Act, 1882.

List of Keywords

Order 43 of Code of Civil Procedure, 1908; Order 39 of Code of Civil Procedure, 1908; Appellate jurisdiction; Scope of jurisdiction of appellate court under Order 43 ; Interim injunction; Temporary injunctions; Appellate court; Appeal from an interlocutory order granting or declining to grant interim injunction; Interlocutory orders; Unlimited jurisdiction; Perverse; Perversity; Capriciousness; Arbitrariness; Malafides; Extraneous matters, Suit pending; Adjudication on merits; Doctrine of lis pendens; Pendente lite transfers; Panacea; Interim injunction restraining the transfer of suit property; Status quo; Suit property; Encumbrances; Transfer of the suit property pending final disposal of the suit; ad interim injunction pending the suit; Prima facie case; Irreparable injury; Balance of convenience.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13001 of 2024

From the Judgment and Order dated 08.12.2022 of the High Court of Gujarat at Ahmedabad in AFO No. 86 of 2022

Digital Supreme Court Reports**Appearances for Parties**

C.U. Singh, Sr. Adv., Chirag M. Shroff, Mrs. Mahima C Shroff, Anand Thumbayil, Advs. for the Appellant.

Nikhil Goel, Sr. Adv., Ashutosh Ghade, Adithya Koshy Roy, Ms. Siddhi Gupta, Ms. Naveen Goel, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Order**

1. Leave granted.
2. This appeal arises from the order passed by the High Court of Gujarat dated 08.12.2022 in Appeal from Order No. 86/2022 by which the High Court allowed the miscellaneous appeal filed by the respondents herein and thereby set aside the order of injunction which was passed by the trial court below Exhibit-5 in favour of the appellants herein.
3. Heard the learned counsel appearing for the parties and also looked into the materials on record.

SUIT PROCEEDINGS

4. The appellants herein, who are the original plaintiffs before the trial court, instituted the Special Civil Suit No. 54 of 2019 for declaration, cancellation of registered sale deed bearing no. 2863 dated 23.03.2018 and permanent injunction against the respondents herein, that is, the original defendants. In the said suit, the plaintiffs filed an application below Exhibit-5 for grant of temporary injunction under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (“**CPC**”).
5. For the sake of convenience, the parties are referred to by their nomenclature in the original suit.
6. Plaintiff nos. 1 to 3 respectively are real brothers and plaintiff nos. 4 to 6 respectively are their respective wives. Defendant no. 1 is the real brother of the plaintiff nos. 1 to 3 respectively and defendant no. 2 is his wife. Defendant nos. 3 and 4 respectively are the sons of the defendant nos. 1 and 2 respectively, and defendant no. 5 is the wife of the defendant no. 3.

Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Others

7. In brief, it is the case of the plaintiffs that they purchased the suit property situated in Sub-Plot No. 1, Navrang Co-operative Housing Society, Survey No. 549/2, Alkapuri, Vadodara on 19.09.1991 by way of a registered sale deed bearing no. 13813 in the joint names of plaintiff nos. 1 to 3 and defendant no. 1. By way of one another registered sale deed bearing no. 13805 executed on the same date, the first floor of the suit property was purchased by the plaintiff nos. 4 to 6 and defendant no. 2. Thus, the plaintiffs and defendant nos. 1 and 2 became joint owners of the suit property and their names were accordingly mutated in the city survey record.
8. The plaintiffs and defendant nos. 1 and 2 decided to start a jewellery showroom on the suit property and for the purpose of development and construction, a power of attorney was executed by the plaintiffs along with the defendant no. 2 in favour of the defendant no. 1 before the Executive Magistrate on 06.04.1995. However, after remaining operational for few years, in November, 2013, the jewellery showroom constructed on the suit property stopped its operations.
9. The plaintiff no. 5 received a notice dated 02.01.2019 issued by the City Survey Officer under Section 135(D) of the Bombay Land Revenue Code inviting objections if any against the recording of change of ownership in respect of the suit property. It is the case of the plaintiffs that upon receiving the said notice, they enquired and found out that the defendant no. 1, on the strength of the aforesaid power of attorney, had executed a registered sale deed in favour of his son, defendant no. 3 in respect of the suit property.
10. Being aggrieved by the aforesaid, the plaintiffs instituted the suit along with an injunction application below Exhibit-5 seeking the reliefs as stated above.
11. The plaintiffs, in their application below Exhibit-5 for interim injunction under Order 39 of the CPC, pointed out the following:
 - a. The power of attorney was executed in favour of the defendant no. 1 only with a view to entrust the day to day conduct of administrative and procedural functions and not to enable the defendant no. 1 to sell the suit property. There was no intention to sell the property as it was purchased only for the purpose of running a jewellery showroom. It is on the basis of the said power

Digital Supreme Court Reports

of attorney that the necessary permission to put up construction on the suit property was obtained from the Vadodara Municipal Corporation in 1995. Upon completion of the construction of the showroom and start of the business operations in 1997, the power of attorney became redundant, but was kept preserved in the office for the sake of record.

- b. In 2012, the defendant no. 1 expressed his inclination to retire and part ways from the family business, however this was not accepted by the plaintiff nos. 1 to 3 respectively as they wanted the family members to live jointly. Subsequently, the defendant no. 1 stopped paying attention to the family business and withdrew his share as well as additional amounts from the family business and created his individual responsibilities. As the liabilities of the defendant no. 1 increased, the family business being conducted on the suit property had to be shut down in November, 2013. However, the business records, documents, ornaments, stocks, etc. were kept in the showroom. Thereafter, the plaintiffs along with their sons started their own business.
- c. The defendant no. 1, in collusion with the officials of the office of the sub-registrar, executed a sale deed of the suit property without any sale consideration in favour of his son, that is, the defendant no. 3, illegally relying on the power of attorney of 1995. The other son of the defendant no. 1 and the wife of the defendant no. 3 stood as the attesting witnesses to the said sale deed.
- d. As per the recitals in the sale deed, the defendant no. 1 is said to have sold the suit property to his son for a consideration of Rs. 1.70 Crore. However, the market value of the suit property at the time of the execution of the sale deed was more than Rs 20 Crore. Further, the sale amount of Rs 1.70 Crore has not been received by the plaintiffs till date.
- e. The corporation taxes to the tune of Rs 4,82,000/- were paid by the plaintiffs on 20.07.2018, that is, after the execution of the sale deed on 23.03.2018. The said tax receipts are in the name of Narayan Jewellers Pvt. Ltd., that is, the family business corporation.
- f. The plaintiffs had to initiate criminal prosecution against the defendants for their illegal actions.

Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Others

- g. It was apprehended that the defendants may execute third party agreements in relation to the suit property thereby defeating the rights of the plaintiffs, leading to a situation wherein the plaintiffs would not be able to use and enjoy their property and may give rise to further litigation with respect to the suit property.
 - h. Disposal of the suit may take time and therefore injunction was prayed for during the pendency of the suit.
12. The defendants, in their written statement and reply to the application for interim injunction below Exhibit-5, took the following stance:
- a. Initially the relations between the plaintiff nos. 1 to 3 and defendant no. 1 and other family members were cordial, however differences started arising from the year 2000. The plaintiff nos. 1-3 used to withdraw huge amounts from the account of the company, however the defendant no. 1 was not allowed to withdraw amounts to the same extent.
 - b. The defendant no. 1 initially suffered from tuberculosis and later cancer in the years 2004 and 2007 respectively. Although there was an internal family arrangement that allowed all the four brothers to withdraw equal amounts from the business, yet the arrangement was not honoured by the plaintiffs and in 2013, the amount due was to the tune of Rs 16.50 Crore. Thus, the defendant no. 1 is entitled to receive this amount from his brothers or from the company.
 - c. As the defendant no. 1 was sick at the time of the closure of the showroom situated on the suit property in 2013, he could not visit the showroom and as a result the stock in trade, finished and semi-finished goods, gold, diamond, platinum, etc. was taken away by the plaintiffs.
 - d. At the time of the closure of the showroom, the plaintiff nos. 1 to 3 handed over the keys of the showroom to the defendant no. 1 and instructed him to sell the same in the open market and distribute the consideration equally among the joint owners. Accordingly, the physical & vacant possession of the suit property was handed over to the defendant no. 1.
 - e. The defendant no. 1 intimated the plaintiff nos. 1 to 3 over a phone call that he was selling the suit property in favour of the

Digital Supreme Court Reports

defendant no. 2 and also that the sale consideration of Rs 1.70 Crore would be adjusted towards the dues of the defendant no. 1.

- f. The power of attorney is a registered document and was never cancelled by the plaintiffs, and the said power of attorney was used with the consent of all the signatories to it.
- 13. The trial court, after hearing the parties on the application for grant of temporary injunction, took the view that the conditions for grant of injunction in favour of the plaintiffs were satisfied and accordingly allowed the injunction application below Exhibit 5 vide order dated 10.01.2022.
- 14. The trial court took the view that the sale deed executed by the defendant no. 1 in favour of the defendant no. 3 did not bear the signatures of any of the plaintiffs. Further, the plaintiffs had produced the sale deed of 1991 by way of which the plaintiffs along with the defendant nos. 1 and 2 respectively had become joint owners of the suit property. In view of the aforesaid, the trial court took the view that the plaintiffs were able to establish a *prima facie* case that they have a right title and interest in the suit property. Further, the trial court held that the facts of the case suggested that the balance of convenience was in the favour of the plaintiffs and further that if temporary injunction was not granted, then the plaintiffs may suffer loss that cannot be compensated in terms of money.
- 15. In view of the aforesaid, the trial court directed the defendant no. 3 not to deal or transact with anyone in any manner in respect of the suit property till the disposal of the suit.

APPEAL BEFORE THE HIGH COURT

- 16. Aggrieved by the order granting injunction in favour of the plaintiffs, the defendants filed a miscellaneous appeal before the High Court under Order 43 Rule 1 read with Section 104 of the CPC. The defendants challenged the order granting injunction *inter alia* on the following grounds:
 - a. The plaintiffs have failed to make out any *prima facie* case as the power of attorney executed in favour of the defendant no. 1 is not under challenge and thus no presumption can be drawn against it.

Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Others

- b. The relief sought in the interim injunction application below Exhibit-5 is virtually the same as the relief sought in the suit.
- c. No irreparable harm would be caused to the plaintiffs if injunction is declined as the non-grant of relief can be compensated in terms of money. The plaintiffs have not been able to establish any of the necessary conditions required for grant of injunction.
- d. Grant of injunction in favour of the plaintiffs has caused irreparable harm to the defendant no. 3 as he is unable to utilize the property that he has purchased by way of a registered sale deed.
- e. The defendant no. 1 has acquired a right in the suit property by virtue of a family arrangement and he executed the sale deed on the strength of the power of attorney only after taking consent of all the signatories. As per the family arrangement, an amount of Rs 16.50 Crore is due to the defendant no. 1 from the plaintiffs.
- f. Clause No. 5 of the power of attorney dated 05.04.1995 suggests that the power was given to undertake the procedure for sale in reference to the Income Tax authority and clause no. 6 suggests that the defendant no. 1 is empowered to fully utilize that power.
- g. The defendant no. 3 is a *bona fide* purchaser of the suit property for a sale consideration of Rs 1.70 Crore and since the registered sale deed is not void, there can be no injunction against the purchaser from enjoying the suit property and the sale in his favour cannot be said to be null and void.
- h. The defendants, under the threat of being forcibly & illegally dispossessed from the suit property, preferred Regular Civil Suit No. 36/2019 before the 10th Additional Chief Judicial Magistrate & Civil Judge, First Class, Vadodara seeking mandatory injunction against the plaintiffs, wherein the said Civil Judge was pleased to restrain the plaintiffs and their agents from entering into the premises of the suit property till the disposal of the Regular Civil Suit No. 36/2019.
- i. The *modus operandi* of the plaintiffs is to ensure that the defendants are not able to enjoy and utilise the suit property.

Digital Supreme Court Reports

The plaintiffs have raised objections with the electricity company as regards grant of electricity connection in the suit property.

- j. As part of the family arrangement between the parties, it was decided between the brothers that the joint business properties would be partitioned by executing sale deeds in favour of their respective sons and the sale consideration would be transferred from the business account to the account of purchasers and such purchaser shall issue cheques in the names of the four brother. While transfer of different properties took place as per this arrangement, no transfer or transaction was done in favour of the defendant no. 1. When this was taken up by the defendant no. 1 with his other brothers, they asked him to transfer the suit property to his son, that is, the defendant no. 3 by exercising his rights under the power of attorney.
17. In response to the aforesaid contentions of the defendants before the High Court, the plaintiffs *inter alia* submitted the following:
 - a. The power of attorney was executed in favour of the defendant no. 1 only for the purpose of obtaining necessary permissions for development and construction of the suit property and the power to sell the property was never conferred through the said power of attorney.
 - b. The defendant no.1 executed the sale deed in respect of the suit property in favour of his son, that is, the defendant no. 3, for a meagre consideration of Rs 1.70 Crore whereas the market value of the property at the relevant point in time was more than 17 Crore.
 - c. The plaintiffs have filed a written complaint dated 09.01.2019 against the defendant nos. 1, 3, 4 and 5 respectively for the offence punishable under Sections 406, 409, 420, 465, 467, 468, 471 and 120 of the IPC respectively in relation to the execution of the sale deed dated 23.03.2018 and one another complaint dated 18.01.2019 against defendant nos. 3 and 4 respectively for breaking the lock and forcibly entering the suit property along with ten other persons.
 - d. Injunction was granted by the trial court by way of a well-reasoned order after taking into consideration all the detailed

Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Others

facts and contentions of both the parties. The appellate court should remain slow in substituting its own discretion with the one exercised by the court of first instance unless the exercise of discretion by the first court was shown to be malicious, capricious, perverse or having been exercised in ignorance of the settled principles of law regulating the grant or refusal of interlocutory injunctions.

18. The High Court by way of the impugned order, allowed the appeal filed by the defendants and vacated the order granting injunction in favour of the plaintiffs. The High Court took the view that with the grant of injunction, the trial court had virtually allowed the suit, though no case for grant of interim injunction could be said to have been made out. The High Court also referred to other pending civil and criminal litigations between the parties and observed that the same suggested that the plaintiffs were intentionally harassing the defendants one way or the other. The relevant observations made by the High Court are extracted below:

"16. [...] It also emerges from the record that the respondents seek share from the property which the appellant is entitled to get as family settlement and they are also creating hurdle in utilizing the property by restraining electricity company from granting electricity connection to the appellants. That the respondents approached the electricity company by filing application with regard to non-grant of electricity connection to the appellants and, therefore, the appellants are not given electricity connection. It emerges from the record that against inaction on the part of the electricity company, the appellants preferred Special Civil Application No.21075 of 2022 before this Court and this Court vide order dated 19.10.2022 issued notice and it was kept open for the electricity company to consider the application preferred by the appellants in the month of February 2022. In view of the aforesaid facts, it clearly reveals that the respondents are intentionally harassing the appellants by one or the other way. It appears that the original plaintiffs filed the suit for declaration, cancellation of registered sale deed No.2863 dated 23.03.2018 which was executed by original defendant no.1 in favour of original defendant no.3

Digital Supreme Court Reports

in connection with the suit property of Sub Plot No.1 of Navrang Cooperative Housing Society, R. C. Dutt Road, Alkapuri, Vadodara and permanent injunction against the original defendants along with the injunction application at Exhibit 5. Considering the facts and circumstances of the case, I am of the opinion that by granting interim relief vide order dated 10.01.2022, the trial court had virtually allowed the suit, even though none of the circumstances for consideration for grant of interim relief did ever exist. In view of the aforesaid facts, in my view, the trial court has committed an error of facts and law in passing the impugned order passed below Exhibit 5 and the said order is erroneous and against the settled principles of law. The trial court, while granting the interim relief, has not considered all the relevant aspects and passed the impugned order.

17. Considering the fact that the plaintiffs filed Special Criminal Application No.859 of 2019 before this Court seeking direction for registration of FIR against the defendants and this Court vide order dated 04.02.2019 directed the police authorities to register the FIR. It appears that the defendants filed Criminal Misc. Application No.1 of 2019 in Special Criminal Application No.859 of 2019 for recalling of the order dated 04.02.2019, which came to be rejected by this Court. It reveals that against the order dated 04.02.2019 passed in Special Criminal Application No.859 of 2019 and order dated 20.03.2019 passed in Criminal Misc. Application No.1 of 2019, the defendants preferred Special Leave to Appeal before the Hon'ble Supreme Court, which came to be dismissed vide order dated 24.02.2020.

18. Considering the facts of the case, it appears that the plaintiffs have tried to see that any how, the defendants – appellants herein be ruined and surrendered to the demands of the original plaintiffs. It seems that the original plaintiffs one after another initiated proceedings against the present appellants including the civil as well as criminal. It is relevant to note here that in criminal proceedings though “C” summary report came to be filed by the Investigating

Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Others

Officer before the concerned Court, the original plaintiffs by utilizing the political pressure have restrained the Investigating Officer to submit the "C" summary report before the concerned Court and/or to withdraw "C" summary report. It also appears that in earlier round of litigation, the original plaintiffs reached upto the Hon'ble Supreme Court as they are running the business and earning the income from the business. That though the appellants are now out of business and having crunch of money, the original plaintiffs are trying to see that the appellants surrender to the original plaintiffs and even surrender their source of income to the original plaintiffs. That the plethora of evidence which is produced before this Court, is never produced before the trial court and while granting the interim relief in favour of the original plaintiffs, the trial court has no occasioned to deal with such documentary evidence which is produced before this Court. In 2012, the business in the name and style of "Narayan Jewellery" was closed, however, in 2015, the plaintiffs have produced certificate of the chartered accountant wherein the amount disputed in question is shown as goods in transit. So all these facts are required to be decided by leading cogent, convincing and sufficient evidence before the trial court and, therefore, at this stage, the impugned order passed by the trial court is absolutely erroneous and against the principles of law. Considering the aforesaid facts, I am of the opinion that the present appeal deserves to be allowed and the impugned order deserves to be quashed and set aside."

19. In such circumstances referred to above, the plaintiffs are here before this Court with the present appeal. Notice was issued in the Special Leave Petition (Civil) No. 252/2023 filed by the plaintiffs *vide* the order dated 05.01.2023 and parties were directed to maintain *status quo* in respect of the suit property during the pendency of the petition. The status quo has thereafter been extended by subsequent orders of this Court.

APPELLATE JURISDICTION UNDER ORDER 43 OF THE CPC

20. Order 43 of the CPC specifies the orders against which an appeal lies. Sub-Rule (r) of Rule 1 of the said order provides that an appeal

Digital Supreme Court Reports

would lie against an order made under Rules 1, 2, 2A, 4 and 10 of Order 39 of the CPC respectively.

21. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in ***Wander Ltd. v. Antox India P. Ltd.*** reported in **1990 Supp SCC 727**. Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:
 - a. *First*, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and
 - b. *Secondly*, the weakness in ratiocination as to the quality of Antox's alleged user of the trademark on which the passing off action is founded.
22. With regards to (a), this Court held thus:

"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the 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 ... the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below ... 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."
23. This Court, while arriving at the above findings, relied on its earlier judgment in ***Printers (Mysore) v Pothan Joseph*** reported in **(1960) SCC Online SC 62** where it was held thus:

Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Others

[...] as has been observed by Viscount Simon LC in Charles Osenton & Co v Johnston – the law as to reversal by a court of appeal of an order made by a judge below in the exercise of his/her discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case.”

24. It is pertinent to note that in **Printers** (*supra*) this Court had held that ignoring relevant facts is also a ground for interfering with the discretion exercised by the trial court. Furthermore, Viscount Simon LC in **Charles Osenton & Co v Johnston** reported in **1942 A.C. 130**, after stating the above, went on to quote Lord Wright's decision in **Evans v. Bartlam** reported in **1937 A.C. 473**:

“It is clear that the court of appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not entitled simply to say that if the judge had jurisdiction and had all the facts before him, the court of appeal cannot review his order unless he is shown to have applied a wrong principle. The court must, if necessary, examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order.”

25. In **Evans** (*supra*) case, Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the trial court exercised its discretion arbitrarily or incorrectly in the circumstances.
26. What flows from a plain reading of the decisions in **Evans** (*supra*) and **Charles Osenton** (*supra*) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:
- a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and
 - b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.

Digital Supreme Court Reports

27. The principles of law explained by this Court in *Wander's* (*supra*) 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.
28. In *Neon Laboratories Ltd. v. Medical Technologies Ltd.* reported in (2016) 2 SCC 672 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.
29. In *Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan* reported in (2013) 9 SCC 221 this Court emphasised on the principles laid down in *Wander* (*supra*) 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 39 of the CPC. The basis for substituting the view of the trial court should be malafides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below:

"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

Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Others

*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 emphasized 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.*"*

(Emphasis supplied)

30. This Court in ***Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd.*** reported in **(2023) 1 SCC 634** 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.
31. This Court in ***Monsanto Technology LLC v. Nuziveedu Seeds Ltd.*** reported in **(2019) 3 SCC 381**, 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.
32. 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 appellate court under Order 43 of the CPC 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 the ***Wander* (supra)** case.

PRINCIPLES GOVERNING GRANT OF TEMPORARY INJUNCTION

33. In the case of ***Anand Prasad Agarwal v. Tarkeshwar Prasad*** reported in **(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.
34. 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*** reported in **(1992) 1 SCC 719.**)

Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Others**MEANING OF THE EXPRESSION “PERVERSE”**

35. Any order made in conscious violation of pleading and law is a perverse order. In ***Moffett v. Gough*** reported in **(1878) 1 LR 1r 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*** reported in **106 NW 814**, 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.
36. The expression “perverse” has been defined by various dictionaries in the following manner:
 - a. Oxford Advanced Learner’s Dictionary of Current English, 6th Ed. 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 Edition Perverse - Deliberately departing from what is normal and reasonable.
 - c. The New Oxford Dictionary of English - 1998 Edition
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 Edition)
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 Ed.
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.
37. 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

Digital Supreme Court Reports

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 and others reported in (2016) 3 SCC 78)

38. 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 43 of the CPC 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 39 of the CPC.
39. It appears from a reading of the impugned order that what weighed with the High Court in setting aside the order of the trial court was the existence of pending litigations between the contesting parties and the alleged misuse of political power by the plaintiffs in creating hurdles for the defendants in the exercise of their lawful rights. The High Court failed to point out any perversity in the order of the trial court which occasioned it to set aside the grant of injunction. We are of the view that the High Court ought to have limited itself to adjudicating the correctness of the order of the trial court on the settled principles of law and should not have taken into consideration any other extraneous matters, more particularly when the suit is still pending for adjudication on merits before the trial court.
40. We are informed that after the High Court allowed the appeal and before this court granted the interim relief the defendants have transferred the suit property, i.e., during the pendency of the present appeal.
41. We would like to underscore that although the impugned order of the High Court is voluminous and runs into more than 55 pages, yet it regrettably falls short of addressing the pivotal issues raised by the plaintiffs. While the High Court has observed that the order of the trial court has virtually decided the suit, in favour of the plaintiffs, a reading of the impugned order indicates other way round that it is indeed the order of the High Court which seems to have accepted the entire defence put forward by the defendants as the gospel truth, without assigning any cogent reasons for not accepting the *prima facie* case put up by the plaintiffs.

Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Others

42. Instead of subjecting the order of the trial court to the right degree of appellate scrutiny warranted in appeals against interlocutory orders, the High Court has made general and overbroad observations touching upon the malicious intention of the plaintiffs in filing the civil suit and the application below Exhibit-5 for the grant of temporary injunction. The failure of the High Court in pointing out any perversity in the order of the trial court is a glaring reminder of why the High Courts must exercise their appellate jurisdiction against interlocutory orders involving the exercise of discretion of the trial court with great caution and mindfulness. High Courts must not lightly set aside the decision arrived at by the trial court in exercise of its discretion unless the order of the trial court fails to satisfy the parameters as delineated by us in the preceding paragraphs. The failure to engage with these crucial aspects renders the High Court's order deficient, detracting from the objective of rendering substantive and reasoned justice.
43. It is also pertinent to observe that immediately after the High Court set aside the order of the trial court granting interim injunction, the defendant no. 3 entered into a transaction which created a third party right on the suit property. A perusal of the impugned order indicates that although a specific request was made by the plaintiffs before the High Court to stay the operation of the impugned order to enable them to file an appeal before this Court, yet the request was not accepted. It is beyond our comprehension as to why such urgency was exhibited by the High Court in vacating the status quo on the suit property, more so when the suit was still pending before the trial court and the rights of the parties were yet to be crystallized. The sequence in which events have transpired in the present case best illustrates how the exercise of appellate jurisdiction by the High Court in a casual manner can have a cascading effect, which only prolongs litigation and counter-serves the interest of justice.
44. We need not say anything as regards the subsequent transfer of the suit property at this stage for the simple reason that if it has been transferred pending any proceedings, it is for the court trial court to see whether the transaction is hit by *lis pendens* or not. This aspect shall be looked into by the trial court at the time when the suit is taken up for final adjudication as regards the rights of the parties.

Digital Supreme Court Reports

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)
46. In the aforesaid context, we may refer to one old decision of the Calcutta High Court in **Promotha Nath Roy v. Jagannath Kisore Lal Singh Deo** reported in (1912) 17 Cal LJ 427 where it has been observed that a Court will in many cases interfere and preserve property in status quo during the pendency of a suit in which the rights to it are to be decided and though the purchaser *pendente lite* would not gain title, the Court will prevent by injunction the embarrassment that would be caused to the original purchaser in his

Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Others

suit against the vendor. And it has been ruled there on the authority of Turner, LJ in ***Hadley v. London Bank of Scotland***, reported in **(1865) 3 De GJ & S 63** at 70 that if there is a clear valid contract for transfer, the Court will not permit the transferor afterwards to transfer the legal estate to third person, although such third person would be affected by *lis pendens*. Mr. Muhkerjee has drawn our attention to Dr. S. C. Banerji's Tagore Law Lectures on Specific Relief (2nd Edition, page 592) where the decision in ***Promotha Nath*** (supra) has been approvingly referred to and also to Fry's Treatise on Specific Performance (6th Edition) where the same rule has been enunciated as a general principle on the authority of Turner, L.J., in ***Hadley*** (supra).

47. Today, all that we say is that having regard to the nature of dispute between the parties and the materials on record, the property should not change hands any further.
48. In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside.
49. The respondents herein shall maintain *status quo* as regards the suit property as on date and shall not create any further encumbrances over the same in any manner.
50. Any further transfer of the suit property pending the final disposal of the suit shall be subject to *lis pendens* under Section 52 of the T.P. Act irrespective of the fact whether such *lis pendens* has been duly registered by the plaintiffs with the competent authority or not.
51. Pending applications, if any, shall also stand disposed of.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Divya Pandey