

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Smita Das De

FA 113 of 2009

Gayatri Pal since deceased represented by

Abul Hossain

Vs.

Netai Nandi @ Netish Nandi & Ors.

For the Appellant : Mr. Rabindra Narayan Dutta, Adv.,
Mr. Sibasish Ghosh, Adv.,
Mr. Hare Krishna Halder, Adv.,
Mr. Partha Pratim Roy, Adv.,
Mr. Soham Banerjee, Adv.

For the Respondents : Mr. Sukanta Chakraborty, Adv.,
Mr. Subrata Mukherjee, Adv.

Hearing concluded on : 8th May, 2025

Judgment on : 23rd May, 2025

Soumen Sen, J :

1. The appeal is arising out of a judgment and decree dated 11th December, 2008 passed by the learned Civil Judge, Senior Division at Kandi in a partition suit filed by Netai Nandi & Ors. against Smt. Gayatri Pal & Ors. The learned Trial Court decreed the suit in preliminary form whereby it was declared that the plaintiffs and the defendant No.2 jointly had 2/3rd shares in the scheduled described property and the defendant No.1 has 1/3rd shares. The order provided

that in the event no amicable arrangement is arrived at between the parties within the three months from the date of the decree the court will proceed further for final decree and if so required, a survey passed pleader/commissioner should be appointed through court.

2. The defendant No.1 is Smt. Gayatri Pal. She was aggrieved by the said preliminary decree. During the pendency of the appeal, Gayatri died and one Abul Hossain filed an application for substitution on the ground of devolution of interest. The said application was allowed on 3rd May, 2023 with a rider that the objection with regard to the continuation of the proceeding by the present appellant shall be considered at the time of hearing of the appeal.

3. Mr. Sukanta Chakraborty, the learned Counsel for the respondents has raised a preliminary objection with regard to the continuation of the appeal at the instance of Abul Hossain on the ground that Gayatri Pal had transferred her interest in the dwelling house in favour of the present substituted appellant during the subsistence of an order of status quo and any instrument of conveyance or documents executed in violation of the order of the status quo would be non-est.

4. However, we decided to hear all points, although in hindsight it appears that the appellant is pushed to an insurmountable difficulty in dislodging the preliminary objection raised by the respondent.

5. Mr. Rabindra Narayan Dutta, learned Counsel appearing on behalf of the appellant has submitted that Gayatri during her lifetime executed a deed of conveyance in respect of her share in the suit property in favour of the present appellant. That Gayatri had an interest in the suit property is not in dispute. The learned Trial Court has decreed the suit by declaring shares in respect of the scheduled property in excess of the share claimed in the plaint and without there being any amendment carried out during the pendency of the partition suit or immediately thereafter before the preliminary decree was drawn up. The decree itself is contrary to the pleadings. It is submitted that even if it is assumed that the present appellant may not have acquired any interest the fact remains that Gayatri was allowed to continue with the appeal by a coordinate bench presided over by the Hon'ble Justice Jyotirmoy Bhattacharya, a former Chief Justice of this court on 17th March, 2015 and any declaration of share in favour of Gayatri according to her original claim would only inure to the benefit of the present substituted appellant as in the deed itself Smt. Gayatri had referred to the pending litigation.

6. The plaint was placed extensively to show the devolution of interest, nature of the claims of the plaintiffs and the basis of the claims for the share in the schedule property. It is submitted that the property originally belonged to Gadadhar Pal who died intestate was the original owner of the suit plot along with other immovable

properties and left behind his three sons Mahadeb Pal, Kantideb Pal and Gnandra Chandra Pal who inherited the shares in equal proportion after his demise.

7. Gnandra was survived by Sunanda Dey (daughter) and Ananda Pal (son). Binapani Pal widow of Late Gnandra Pal predeceased her husband and died before the enactment of Hindu Succession Act, 1956 and thus the daughter and son of Gnandra being Sunanda and Ananda inherited the shares of their father Gnandra in respect of $1/3^{\text{rd}}$ of 0.05 decimal. The parties are claiming through Kantideb Pal. Kantideb died leaving behind Pushpita Ranjan Pal (Son), Sreemati Pal (widow) and Chapalata Nandi (married daughter). Pushpita Ranjan predeceased Kantideb in 1992 as also Chapalata.

8. It is claimed that Chapalata died before the coming into force of The Hindu Succession Act, 1956. It is submitted that by reason of the fact that Chapalata died prior to the Hindu Succession Act, 1956 she did not acquire any interest in the property of her father Kantideb which the learned Trial Court has failed to appreciate. It is submitted that the plaint would show that the plaintiffs and the defendant No.2 are the legal heirs of late Chapalata Nandi.

9. The plaint also narrates that on 17th July, 1950, the suit property is measuring about 0.02/half decimal out of 0.05 decimal which according to mathematical calculation will come to 0.02467 Chitaks or 11 square feet more or less out of 0.0467 Chitaks or 21

sq.ft. more or less. It is further stated in the plaint that Ananda became the absolute owner of 0.002 ½ decimal along with other immovable properties. After the demise of Sreemati the widow of Kantideb the plaintiffs and the defendant no.2 got the entire 1/3rd share of Sreemati since deceased and thus the plaintiff and defendant no.2 acquired interest in the suit property having 1/3rd share from the deceased Sreemati. Gayatri Pal acquired only 1/3rd share. Attention was drawn to the fact that the plaintiffs have stated that apart from 0.02 /half decimal of land of the suit property, there are other several properties as would be evident from the paragraph 4 of the plaint.

10. The learned Counsel has referred to the written statement filed by the original defendant in which it has been specifically stated that the suit is barred under Section 23 of the Hindu Succession Act. It is averred that apart from the suit plot no.2680/3726 there are other several plots owned by the original owner Gadadhar and after his death his two sons Mahadeb and Kantideb along with Ananda the son of their deceased brother Gandra equally got 1/3rd share of the aforesaid suit plot. It is submitted that after death of Kantideb the sons and daughters of Late Chapalata the predeceased daughter of Kantideb did not acquire any interest or share in respect of the immovable properties left behind by Kantideb as Chapalata died long before the coming into force of the Hindu Succession Act, 1956.

11. It is submitted that in the written statement it is stated that Sreemati Pal widow of Kantideb Pal during her life time on the basis of the oral arrangement got the entire two storied building at Mouza Ruppur P.S Kandi and Gayatri the original defendant no.1, became the owner in respect of the suit plot and building thereon including shop room on the ground floor and by such arrangement the defendant no.1 enjoyed the house property at Mouza Sadpur and Sreemati Pal used to enjoy other house property at Mouza Ruppur and the plaintiffs or the defendants did not acquire any right, title and interest in respect of the suit plot or any portion thereon.

12. It is submitted that there is a variance between the pleading and the proof. While the plaint proceeds on the basis that the plaintiffs are entitled to 0.02 ½ decimal out of 0.05 decimal, in paragraphs 2 and 3 of the affidavit-in-chief of PW 1 admitted the said fact and hence the decree could not have been passed for 0.05 decimal. Moreover, the plaintiff has admitted that apart from the suit plot there are other immovable properties left by the original recorded owner Gadadhar Pal and after his demise his three sons became the absolute owners.

13. In view of the existence of other immovable properties and having regard to the fact that those properties were not included in the suit for partition, the learned Trial Court should have dismissed the suit on the ground that no partial partition in law is permissible.

14. It is submitted that the pleadings would show that the claim of the plaintiffs are in respect of 0.02 ½ decimal whereby the decree was passed in 2 ½ decimal which is a clear perversity as the pleading is the foundation for a Court to pass any order or judgment and the Court cannot traverse beyond the pleadings. The plaintiffs have to prove their own case and they cannot depend on the evidence of the appellants/defendants. For such argument, reliance was placed upon the decision of the Hon'ble Supreme Court in ***Srinivas Raghavendra Rao Desai (dead) by LRs v V. Kumar Vamanrao alias Alok & Ors.***¹, paragraph 15 and ***Union of India v Vasavi Vo-Op Housing Society Ltd. & Ors.***² paragraph 15. Such an argument to our mind is one of desperation as the appellant has admitted the share of the plaintiffs in the suit property in its evidence.

15. The learned counsel has submitted that it is a settled principle of law that a suit for partial partition is not maintainable when the parties admit the existence of other immovable properties. This argument is based on the decision of the Hon'ble Supreme Court in ***Kenchgowda (since deceased) by Legal Representatives v Siddiegowda alias Motegowda***,³ paragraph 16 and the decision of

¹ 2024 (2) ICC (SC) 641: AIR 2024 SC 1310: 2024 SCC OnLine SC 2567

² 2014 (1) ICC (SC) 571

³ 1994 (4) SCC 294

this Court in ***Bhajahari & Ors. v Abdul Karim Shaikh & Ors.***,⁴ paragraphs 5 and 6.

16. Reliance is put on the case of ***Nasib Kumar & Ors. v Colonel Surat Singh (deceased) through L.R.s and Ors.***⁵ to submit that there is no legal bar to transfer of joint property by any co-sharer.

17. In order to demonstrate that the transfer during the pendency of the partition suit in favour of the present appellant does not create a legal bar and the doctrine of lis pendens would not completely vitiate such transaction reliance is placed on the following decisions:

- i. ***Amit Kumar Shaw & Anrs v Farida Khatoon & Anr.***⁶ paragraphs 7, 11 and 17;
- ii. ***Chandra Bai (dead) through Legal Representatives v Khandalwal Vipra Vidyalaya Samiti & Ors.***⁷ paragraphs 8 and 9;
- iii. ***Raj Kumar v Sardari Lal & Ors.***⁸ paragraphs 5,8,9,13.
- iv. ***Chaffoor Ahmad Khan v Bashir Ahmad Khan (dead) by L.R.***⁹

⁴ AIR 1988 Calcutta (D.B) 421

⁵ (2013) 5 SCC 218; AIR 2014 SC (Supp) 1135

⁶ 2005 (3) ICC (SC) 65; AIR 2005 SC 2209

⁷ 2016 (12) SCC 534; AIR

⁸ 2004 (2) ICC (SC) 1; 2004 (2) SCC 601

⁹ 1982 (3) SCC 486

v. **Chander Bhan (D) through LR Sher Singh v. Mukhtiar Singh & Ors.**,¹⁰ paragraphs 15, 17, 21, 22 and 24.

18. It is submitted that the aforesaid decisions would also lend credence to the submission that subsequent transferee would acquire valid title to the property and such transfer is not illegal or unenforceable.

19. In view of the aforesaid the decree is required to be set aside.

20. Mr. Sukanta Chakraborty, learned counsel for the decree holders/co-sharers/respondents has submitted that Gayatri had sold her share in the dwelling house inherited and jointly possessed by the members of the family without prior notice and that too in the teeth of an order of injunction passed on 25th March 2003 and confirmed on 5th December 2023. The sale deed was executed on 11th July 2007 and accordingly the said deed is non-est in the eye of law and cannot give any effective title to the present appellant. In this regard the learned counsel had relied upon the decision in **Surjit Singh & Ors. v Harbans Singh & Ors.**¹¹ paragraphs 3 and 4. It is submitted that in the said decision it has been categorically held that any such transfer would be considered to be non-est.

¹⁰ 2024 (3) ICC 70 (SC): AIR 2024 SC 2267

¹¹ (1995) 6 SCC 50

21. The original appellant during her lifetime did not disclose that she had already sold her share in the dwelling house to a complete stranger and the said fact was only disclosed by Gayatri during the admission of the appeal and full details have been stated with disclosure of the sale deed by the present appellant after her demise in his application for substitution. The learned counsel has referred to the order passed by the Division Bench on 17th March 2015 to show that the Hon'ble Division Bench was pleased to hold that the said sale was in violation of the order of injunction. In refuting the submission that the suit is bad due to a partial partition it is submitted that the subject matter of the present appeal is confined to a dwelling house as no other property of Gayatri had devolved upon the present substituted appellant nor had he claimed to have purchased any other joint properties. The substituted appellant cannot agitate all the issues raised by the original defendant no. 1 in her written statement save and except those which relate to the dwelling house since the rest of the properties had already devolved upon the present respondents by operation of law after the death of the original appellant.

22. The learned counsel has referred to Section 44 of the Transfer of Property Act which restrains a third party from joint possession or other common or part enjoyment of the dwelling house and has submitted that there is a statutory prohibition of a transferee of a share of a dwelling house to claim joint possession. He can at best

file a suit for partition. The learned counsel has also referred to the much celebrated judgment of the Hon'ble Supreme Court in ***Dorab Cawasji Warden v Coomi Sorab Warden & Ors.***¹² paragraphs 26, 27, 29, 30 and 31 to argue that an interim mandatory injunction order can be passed against a stranger purchaser for status quo ante in the event such stranger has forcefully obtained joint possession as it would be in violation of Section 44 of the Transfer of Property Act.

23. Insofar as the discrepancy in the plaint and the judgement with regard to the share of the plaintiffs in the suit property it is argued that the share mentioned in the Schedule of the plaint is a typographical mistake and the learned Trial Court rightly corrected the same at the time of passing of the judgment and order. That the shares have been accurately declared would also be evident from the admission in the written statement of the defendant no. 1 in various paragraphs, namely, paragraphs 6 and 8 of the written statement where Gayatri had admitted the correct position of the different co-shares in the schedule property.

24. In answering the issue with regard to existence of other immovable properties it is submitted that Gayatri during her cross-examination admitted to have sold her share in some of the joint properties inherited from Kantideb Pal since deceased and she had further admitted that the suit property had never been partitioned.

¹² (1990) 2 SCC 117

25. The learned Counsel has referred to the cross-examination of Gayatri to show that she had admitted the suit property was a dwelling house. Kantideb Pal seems to have died in or about 1997-98 in view of her deposition that “*Kanti babu died about 10/11 years ago*” and this fact was deposed on 12th November, 2008 which makes the legal heirs to succeed to the estate of Kantideb in and around such time.

26. The learned Counsel in the alternative has submitted that even if it is contended and held that such transfer in favour of the substituted appellant is valid, it would be difficult for the present appellant to get over the rigors of Section 4 of the Partition Act, 1893 which gives right of pre-emption to the co-sharers. The learned Counsel in this regard has extensively placed Section 4 of the Partition Act and the decision of the Hon’ble Supreme Court in ***Ghantesher Ghosh v. Madan Mohan Ghosh & Ors.***,¹³ paragraphs 4, 10, 17.

27. It is submitted that in the event a finding is arrived at in favour of the appellant insofar as the sale deed is concerned the respondents/decreed holders is entitled to exercise their right of pre-emption by way of purchasing share allegedly transferred by Gayatri during her lifetime in view of the decision of our court in ***Birendra Nath Mukherjee v. Smt. Snehalata Devi & Anr.***¹⁴ paragraph 11.

¹³ 1996 (11) SCC 446

¹⁴ AIR 1968 Cal 380

Observations & Findings:

28. Mr. Rabindra Narayan Dutta, learned Counsel appearing on behalf of the appellants has strenuously argued that the suit is bad for partial partition based on the decision of the Hon'ble Supreme Court in ***Kenchegowda (Since deceased) by Legal representatives v. Siddegowda @ Motegowda***¹⁵ and ***Bhajahari & Ors. v. Abdul Karim Shaikh & Ors.***¹⁶ In ***Kenchegowda*** (*supra*) it appears that the decree for partition was passed on a mere application for amendment. The causes of action for declaration injunction have been distinguished in the said judgment and thereafter it was held in paragraph 16:

“16. Even otherwise, a suit for partial partition in the absence of the inclusion of other joint family properties and the impleadment of the other co-sharers was not warranted in law. Thus, we find no difficulty in allowing these appeals which are accordingly allowed. The judgment and decree of 9 the trial court as affirmed by the first appellate court are restored. However, there shall be no order as to costs.”

29. In ***Bhajahari & Ors.*** (*supra*) the Hon'ble Division Bench noted the judgement in ***Tarini Chakerbutty v. Debendralal De***,¹⁷ and was of the view that the exception to the rule in favour of partial partition was not made out and allowed the second appeal. In the aforesaid case it was proved beyond doubt that the plaintiffs have interest in all the properties left behind by their father and as such

¹⁵ 1994 (4) SCC 294

¹⁶ AIR 1988 Cal 421

¹⁷ 1935 (39) Cal WN 1044

they cannot claim partition in respect of some of those properties only. In other words if the present suit was filed by the defendants as purchasers of some of the properties left behind by the predecessor-in-interest of their vendors it might have been said that their interest being limited to the properties which they had purchased, they could maintain the suit for partial partition, but for equitable distribution amongst all co-sharers all the properties are essentially required to be brought into the hotchpot. However, in so far as the present appeal is concerned it is restricted to a share in the dwelling house insofar as the transferee is concerned. The transferee cannot have any claim in respect of any other properties of Gayatri and hence the argument at the instance of the present substituted appellant that the suit is bad for partial partition cannot be accepted. Although it may be academic however, we would like to briefly discuss instances where partial partition may be allowed.

30. In this regard we may refer to the Division Bench judgment of our court in **Harey Harey Sinha Choudhury & Ors vs. Hari Chaitanya Sinha Chowdhury & Ors.**¹⁸ where these circumstances under which a suit shall not be bad for partial partition has been stated in the following words:

“An exception to the rule that all joint property must be brought into the hotch-pot is that where properties are held jointly by all the co-sharers with strangers who cannot

¹⁸ 40 CWN 1237

conveniently be added as parties to the suit for partition between members of the joint family such properties should be excluded from the partition.

..... There are properties which were possessed by Gobinda Sundar in Common with strangers who are not parties to the present suit; and although the general rule is that a suit for partition must embrace all the joint properties, there are certain recognized exceptions to the said rule. One of them is that where properties are held jointly by all the co-sharers with strangers who cannot conveniently be added as parties to the suit for partition between members of the joint family, such joint properties should be excluded from partition as forming an exception to the general rule. This is one of the recognized exceptions. The same this is pointed out in the case of Rajendra Kumar Bose v. Brojendra Kumar Bose; 37 C.L.J. 191 (1992) where this exception is recognized and the question has been elaborately discussed and we need simply to refer to it.”

31. In **Tarini Charan Chakerbutty & Anr. v. Debendralal Dey & Ors.**¹⁹ Justice Nasim Ali upon noticing some divergence of judicial opinion on the question whether an alinee from a co-sharer is entitled to institute a suit for partition of the property in which he alone is interested held that it is a general rule that a partition suit should embrace all joint properties among the co-sharers, however, there is also a complementary rule that a suit for partition cannot include properties in which each of the parties does not claim an interest. The general rule is the rule of equity and convenience and can be relaxed

¹⁹ 39 CWN 1044

and a partial partition could be allowed where it is not proved that the parties will be prejudiced or inconvenienced by such partition. This has been reiterated by a coordinate bench of this court in the case of **Umapati Manna & ors. vs. Becharam Manna & ors.**²⁰.

32. A division bench of Himachal Pradesh High Court in a decision rendered in the case of **Smt. Lila Wati & ors. vs. Paras Ram & ors.**²¹ has held that a partition between the coparceners might be partial either in respect of the property or in respect of the persons making it. It was further held that it is open to the members of a joint family to divide and severance of interest in respect of a part of the joint estate while retaining their status as a joint family and holding the rest as the properties of a joint and undivided family.

33. In the instant case Gayatri also had sold her shares in many of the joint family properties.

Mr. Dutta has referred to **Prasanna Kumar Koley & Ors. v. Biswanath Koley**²² for the proposition that preliminary decree should be based on the suit property mentioned in the plaint schedule and the learned Trial Court has no jurisdiction to pass a decree disregarding the plaint schedule. In **Prasanna Kumar Koley** (*supra*) the issue that came up for consideration before the Co-ordinate Bench was whether after final decree is passed

²⁰ 1990 (1) C.L.J. 461

²¹ AIR 1977 H.P. 1

²² 2025 (1) ICC 417 (Cal) : AIR 2025 Cal 47

any amendment should be allowed to the plaint schedule. It was found that the partition commissioners' report is palpably bad as it included allocation of the particular Dag number which is not a part of the suit property and it omitted to allocate a particular plot which in turn comprised of a portion of a suit property. The co-ordinate Bench was of the view that once the court passes a final decree it would be binding on the parties and conclusive in terms of the rights and liabilities as well as title of the parties. The subsequent ministerial work left regarding drawing up of a decree and putting the proper stamp thereon does not vitiate the existence of a final decree itself. With regard to the amendment to the schedule of the plaint it was observed that the order of the trial court refusing amendment had attained finality and on such facts the Hon'ble Court was of the opinion that the preliminary decree and/or plaint schedule cannot be permitted to be amended or allowed to be reopened at this juncture. In the instant case, the decree was based on evidence and admission of the extent of the suit property over which the parties were litigating. This would be clear from the pleadings as well as the evidence of the parties.

34. Mr. Dutta the learned Counsel has submitted that heirs of Chapalata would not inherit any share of the father of Chapalata, Kantideb who is the grandfather of some of the defendants namely,

Netai, Santilata, Jayanti, Sanju, Basanti and Aparajita since as per the Hindu Law that was in existence before 1956, daughters did not inherit any share. However, it is considered that so far as the other legal heirs of Pushpita Ranjan and Sreemati would devolve upon the aforesaid persons.

35. It is thus submitted that since Chapalata did not acquire any interest at the time of her death her legal heirs would not be entitled to any share of Kantideb father of Chapalata, alive at the time of death of his daughter Chapalata. In this regard reliance has been placed by Mr. Dutta upon the decision of the Division Bench Judgement of Bombay in ***Radhabai Balasaheb Shrike (since deceased) through legal heirs & Ors. v. Keshav Ramchandra Jadhav & Ors.***²³ The learned Counsel has submitted that in ***Radhabai Balasaheb Shrike*** (*supra*) it has been held in paragraph 35 that:

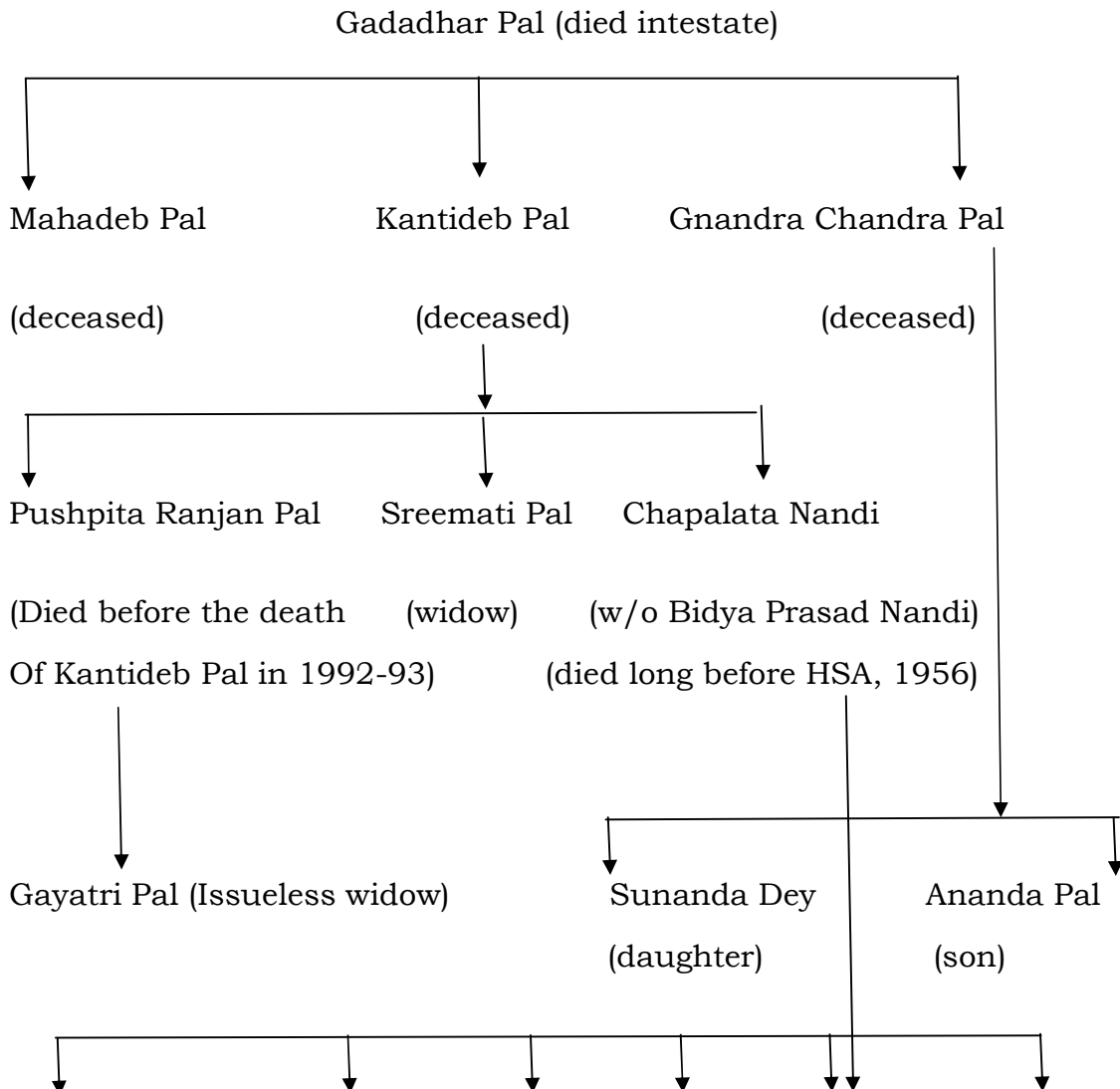
“35. A daughter would not have any right, either limited or absolute, by inheritance prior to coming into force of the Act of 1956 in the property of her deceased father who died prior to 1956 leaving behind him in addition to such daughter, his widow as well.”

36. The pivotal point raised in this appeal as by way of objection fundamentally is the sanctity of the deed of sale executed by Gayatri the original appellant on 11th July, 2007 in favour of the

²³ 2024: BHC-AS:43314

present appellant. The interplay between Section 52 of the Transfer of Property Act and alienation in violation of the order of status quo or injunction would also be relevant in deciding the future of the substituted appellant vis-à-vis the suit property.

37. Although genealogical table may not be of much relevance in deciding the issues but it cannot be said that it is completely irrelevant as it would give a basic idea of the devolution of the properties and the relationship between the parties. The genealogical table of Pal family is given below:



Netai Nandi Santilata Dey Jayanti Sanju Basanti Aparajita
 @Nitesh Nandi w/o Ananda Nandi Nandi Chowdhury Dey
 Mohan Dey

38. Gadadhar was the original owner of entire 5 decimal land appertaining to Mokuza-Sadpur, Touzi No.253, Holding No.45/54, J.L. No.6, R.S. Khatian No.749, L.R. Khatian No.214, R.S. Dag No. 2680/3726, L.R. Dag No.3681, Ward No.2 within Kandi Municipality, Police Station- Kandi, District- Murshidabad along with other immovable properties in R.S. and L.R. Dag No.(s) 192 and 198, J.L. No. 85, Mouza-Ruppur, Police Station-Kandi, District- Murshidabad.

39. The appeal is presently confined to the dwelling house. In the plaint, although it is stated that the suit property consists of 0.05 Satak (decimal) and the plaintiffs have in effect prayed for 18 gondas of land which in effect is 2 ½ percent of .05 decimal the fact remains that the suit land is 5 decimal and not .02 decimal. It would be evident from the cross-examination of PW1 in which he has stated the following:

“The total land is 5 dec. I have instituted this suit in respect of 2 ½ dec. land is containing three stories building. There is no vacant land on any side of the suit building on the eastern side there is a public passage.

xxx

At present the defendant Gayatri Pal is residing in the suit property. The defendant is the daughter-in-law of the family. We pray for partition by metes and bounds by giving wall to maintain privacy.”

40. The defendant Gayatri in her evidence admitted the aforesaid fact in paragraphs 7 and 8 of her written statement. In her evidence she has also admitted the aforesaid fact. The parties by their pleadings and adducing evidence have consciously reaffirmed the original position vis-à-vis their share in the schedule property and accordingly we are unable to accept the submission of Mr. Rabindra Narayan Dutta learned Counsel for the appellant that the Trial Court has exceeded its jurisdiction in declaring the shares of the plaintiffs and the defendant no.2 notwithstanding such mistake in the plaint. The pleadings are required to be read as a whole along with the evidence. The parties were not unmindful of the fact that the suit property is of 5 decimal in which the dwelling house is situated. Both the parties had the opportunity to lead evidence with regard to their shares in respect of the suit schedule property and they have admitted to the said facts in their evidence on the basis of which the judgment was pronounced. Both sides understood the real issue and lead evidence accordingly. The plaintiff cannot be denied just relief merely because of an inadvertent mistake with regard to the declaration of shares in the schedule of the plaint. The said mistake is obvious having

regard to the pleadings of the parties and the evidence adduced by the parties at the trial.

41. The actual state of affairs in the family was known to Gayatri insofar as the inheritance of the respective shares are concerned and in the written statement Gayatri has not specifically challenged the shares of the aforesaid persons. In any event in view of the fact that the assignee transferee has no locus to maintain the appeal and the other co-sharers who could have challenged the said finding and would be vitally affected by such declaration of shares have not challenged the preliminary decree, it is not necessary for us to go into such question at this stage.

42. Mr. Dutta has tried to rely upon few documents at the appellate stage to show that the joint family had other properties that were not included in the partition suit and in view of the fact that the present substituted appellant was not a party to the earlier proceedings, the said documents could not be brought on record and under such circumstances the court may permit production of document at the appellate stage in the light of the decision of the Hon'ble Supreme Court in ***Maharashtra State Road Transport Corporation v. Mahadeo Krishna Naik***²⁴ in order to do complete justice.

²⁴ AIR 2025 SC 1172: AIR Online 2025 SC 80

43. We are not inclined to allow such prayer, in view of the fact that the appellant itself is not entitled to maintain the appeal as a transferee pendente lite and moreover the claim of the present appellant can only be confined to the share in the dwelling house.

44. The decision in ***State of Haryana Anr. v. Amin Lal (since deceased) through his LRs. & Ors.***,²⁵ was relied upon to show that if there is no specific denial to the pleadings of the plaintiff then it should be presumed that the allegations are deemed to have been admitted. This was cited on behalf of the appellant to show that Chapalata's right to succeed to the estate was not denied by Gayatri in her written statement nor any issue was framed in this regard. However, the right of the defendants to the share in the property cannot be defeated on the basis of the deed of assignment which is non-est in the eye of law. The learned court observed in paragraph 8.1 which is reproduced below:-

“8.1 We find this argument unconvincing for several reasons: In their written statement before the Trial Court, the appellants did not specifically deny the plaintiffs' ownership of the suit property. Instead, they primarily relied on the plea of adverse possession. Under Order VIII Rule 5 of the Code of Civil Procedure, 1908, allegations of fact not denied specifically are deemed to be admitted. By asserting adverse possession, the appellants have impliedly admitted the plaintiffs' title.”

²⁵ 2025 (1) ICC 794 (SC) : AIR Online 2024 SC 765

45. In ***Thangam & Anr. v. Navamani Ammal***²⁶ similar issue came up for consideration where it has been categorically stated that in absence of paragraph wise reply to the plaint it becomes a roving enquiry for the court to find out as which line in some paragraph in the plaint is either admitted or denied in the written statement filed as there is not specific admission or denial with reference to the allegation in different parts. In observation of the Court in paragraph 15.2 has been reproduced below:

“15.2 The requirement of Order VIII Rules 3 and 5 CPC are specific admission and denial of the pleadings in the plaint. The same would necessarily mean dealing with the allegations in the plaint para-wise. In the absence thereof, the respondent can always try to read one line from one paragraph and another from different paragraph in the written statement to make out his case of denial of the allegations in the plaint resulting in utter confusion.”

46. In ***Srinivas Raghavendraro Desai (dead) by LRs. v. V. Kumar Vamanrao @ Alok & Ors.***²⁷ the Court has stated in paragraph 15:

“15. There is no quarrel with the proposition of law that no evidence could be led beyond pleadings. It is not a case in which there was any error in the pleadings and the parties knowing their case fully well had led evidence to enable the Court to deal with that evidence. In the case in hand, specific amendment in the pleadings was sought by the plaintiffs with

²⁶ 2024(2) ICC 807 (SC) : AIR 2024 SC 1324

²⁷ 2024(2) ICC 641 (SC): AIR 2024 SC 1310

reference to 1965 partition but the same was rejected. In such a situation, the evidence with reference to 1965 partition cannot be considered.”

47. In the instant case the parties knowing their case fully well had led evidence to enable the court to deal with such evidence and hence the said decision although cited on behalf of the substituted appellant favours the defendants more than the appellant.

48. In **Karan Chabria v. Yashwant Chabria & Ors.**²⁸ the Coordinate Bench presided over by one of us has reiterated the same principle in stating:

“If there is a variation between the pleading and the proof it is elementary that the court should discard any evidence which does not have its foundation in the pleadings. It is well settled that no amount of evidence can be looked into upon a plea which was never put forward. It is also equally well settled that the court cannot grant relief to the plaintiff on a case for which there is no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. The appellant has never disputed due execution and attestation of the Will”

49. It has been strenuously argued by relying upon the decision of the Hon’ble Supreme Court that the plaintiff could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus cast upon him irrespective of the question whether the defendants have proved their

²⁸ 2023(1) ICC 63 (Cal): AIR Online 2022 Cal 1299

case or not. The instant suit is a suit for partition. Everyone is a plaintiff and everyone is a defendant. The pleadings clearly admit that the suit property is of 5 decimal and the original defendant has admitted the said fact and proceeds on the basis that it relates to declaration of half share of the total in the suit property consisting of 5 decimal and accordingly there is no ambiguity with regard to the identity of the suit property or the respective shares as claimed in the suit property. Moreover, admission is the best piece of evidence. A fact admitted need not be proved. The only dispute is with regard to the shares as claimed by the plaintiffs in the suit. They have admittedly claimed half share of the total although there was an inadvertent error initially with regard to their share of the suit property.

50. However, the more fundamental issue that requires to be considered is the attempt of Gayatri to transfer the property during the subsistence of the order of injunction and status quo. In fact, the sale deed dated 11th July, 2007 clearly mentioned the pendency of the suit which made it obligatory on the part of the present appellant to ascertain the existence of the interim order or any prohibition against alienation if in existence.

51. We have read the sale deed and it appears that the suit was filed with full knowledge of the suit and the order of prohibition against alienation. This itself disentitles the appellant to plead innocence and the benefit of a bona fide purchaser for value without notice.

52. The interplay between Section 52 and an order of injunction restraining a party from alienation during the pendency of the suit concerning an immovable property has to be considered in the context of the facts disclosed before the court. When a suit involving immovable property is pending, transfer is permissible with the leave of the court. A transfer during the pendency of the suit by itself will not make such transfer invalid even if it is executed without the leave of the court. A question may arise as to whether the transferee is aware of the pendency of the suit at the time of transfer. If the transferee with reasonable due diligence is unable to find out that no litigation is pending concerning the immovable property or the deed of transfer is silent with regard to pendency of a proceeding involving such immovable property which the transferor even with due diligence was unable to ascertain a transferee may in an appropriate case can take the benefit of a bona fide transferee for value without notice.

53. However, when an order of injunction is in place and the transferee has agreed to enter into such transaction knowing fully well the predicament and uncertainties of such transaction, as it would depend solely on the outcome of the proceeding he takes a calculated risk. All the decisions that have been relied upon by Mr. Dutta in this regard are distinguishable on facts and we have dealt with such at a later stage. The decisions are not an authority for the proposition that a transferee who is aware of the pendency of the proceeding on the teeth

of an order of injunction would acquire a valid title to the property. In fact, in the earlier stage of this proceeding the fact of transfer was considered by a Co-ordinate Bench presided over by Justice Jyotirmay Bhattacharya, former Chief Justice of our Court on 17th March, 2015, relevant portions, whereof are reproduced below:

“Having regard to the fact that such sale was made by the appellant in violation of the order of injunction passed by the Learned Trial Judge, the fate of the said sale is also required to be considered in case occasion arises for such consideration at the time of hearing of the appeal.

If it is ultimately held that the transfer which was made by the appellant in favour of a stranger purchaser, becomes ineffective due to sale of her share in the suit property in violation of the injunction property then it cannot be held that she lost her title in the property by virtue of such sale in favour of the stranger purchaser. Since the pendency of the suit itself has been disclosed by the appellant in the sale deed itself, the purchaser admittedly purchased the said property with notice of the suit.

Be that as it may, presently we are not concerned with the right which the purchaser has acquired in the suit property by virtue of the said sale. He has not come forward seeking leave to continue with the suit under Order 22 Rule 10 of the Code of Civil Procedure. Order 22 Rule 10 of the Code of Civil Procedure does not provide for dismissal of the suit, in case, any of the parties transfers his interest in the suit property during the pendency of the suit. It simply gives an additional right to the transferee to be added in the suit and/or appeal for continuing the suit and/or appeal by himself.

Since there is no provision either in the Transfer of Property Act or in the Civil Procedure Code which debars the plaintiff and/or the appellant to continue with the suit and/or appeal even if he transfers his share during the pendency of the suit, attracting the provision of lis pendense under Section 52 of the Transfer of Property Act, we cannot hold that the appellant has lost her locus either to proceed with the appeal or to file this application for recall of the order of dismissal of the appeal.

Accordingly, we also do not find any substance in this part of the contention of Mr. Panda.” (emphasis supplied)

54. The fundamental issue raised for consideration is whether the present appellant can enforce any right in view of the order of the status quo passed during the pendency of the suit. It is an admitted position that during the pendency of the partition suit on 5th December, 2023 the learned Trial Court passed the following order:

“Advocate hajiras are filed on the concerned parties. Today is fixed for filed written objection against the injunction petition. Ld. Lawyer for the defendant submits that he is not willing to file any written objection and he submits for hearing of the injunction petition at this stage. Hence the injunction petition is taken up for hearing. Heard the ld. Advocates of both sides. Perused order no.2 dated 25.3.2003 together with plaint and found that the status quo order has already been passed for restraining the parties. Considering the nature and character of the suit I am of the view that it should be wise to pass order of maintaining status quo against the parties for the sake of availing the multiplicity of cases between the parties future.” (emphasis supplied)

55. It appears that during the subsistence of the interim order Gayatri Pal executed deed of conveyance on 11th July, 2007 in favour of the present appellant. In the event we arrive at a finding that the said document is non-est by reason of prohibitory order then no interest could be conveyed in law and in fact in favour of the third party appellant. The subsistence of an order of injunction which in the instant case is in the nature of status quo makes such transfer void ab initio. It is immaterial whether a party has acquired any interest in the property with or without notice of such proceeding.

56. The right of the present substituted appellant to continue with the appeal by reason of devolution of interest appears to be based on the decision of the Hon'ble Supreme Court in ***Amit Kumar Shaw (supra)***.

57. Admittedly the transfer had taken place during the pendency of the partition suit. The said judgment has reiterated that an alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under Section 52 of TPA as also under Order I Rule 10 of the CPC as a decree passed in the suit in which such transfer had taken place binds the transferee. After discussing on the elements of Section 52 of the Transfer of Property Act it was stated that a transferee pendente lite to the extent he has acquired interest from one of the parties in the suit is vitally interest in the litigation where the transfer is of the entire

interest of the co-sharers concerned may not be a necessary consideration. However, in the instant case the transfer is void ab initio as it was effected when the parties were directed to maintain status quo and hence the said judgment is distinguishable.

58. The right of a transferee on assignment, creation or devolution of any interest has also come up for consideration in **Chandra Bai** (*supra*) where after referring to **Vidur Impex** (*supra*) the Hon'ble Supreme Court held that though the said judgment dealt with impleadment under Order 22 Rule 10 of CPC and Section 52 of the TPC however, the said decisions would not apply to the facts of the case since the court was considering at what stage the assignee or a succeeding interest pending litigation can seek impleadment. It would clearly appear from the following paragraphs of the said judgment:

“6. Mr Sanjib Sen, learned Senior Counsel appearing for Respondent 1 Society submitted that in a case under Order 22 Rule 10 CPC, where rights are derived by an assignee or a successor-in-interest pending litigation, it is for that assignee or transferee to come on record if he so chooses and to defend the suit. In support of his submission he relied on the decisions of this Court in State of Orissa v. Ashok Transport Agency and Dhurandhar Prasad Singh v. Jai Prakash University and pointed out that under Order 22 Rule 10, the right of the assignee and/or the successor-in-interest will continue when there has been a devolution of interest during the pendency of a suit. The suit can. by leave of the Court, be continued by or against the persons upon whom

such interest has devolved and this entitles the person who has acquired interest in the subject-matter of a litigation by assignment or creation or devolution of interest pendente lite or any other person in interest, to apply to the Court for leave to continue the suit.

7. Mr Sanjib Sen further contended that no period of limitation is prescribed under Order 22 Rule 10 CPC. In fact the right to apply under this Rule is a continuous right and application can therefore be made at any time till the proceedings are pending. He further contended that the question of delay/laches or setting aside abatement of suit arises only where the case falls under Order 22 Rule 3 or Rule 4 and not where the case is covered by Rule 10. According to him, it is the discretion of the Court and if the Court is prima facie satisfied with the facts so pleaded before the Court, it can allow such application.

8. We have further noticed that in Baijnath Ram v. Tunkowati Kuer the Full Bench of the Patna High Court has held: (SCC OnLine Pat para 15)

"15. Another thing to notice in connection with this rule is that a party on whom the interest of the deceased plaintiff or defendant devolves is not entitled to continue the suit or appeal as a matter of right, it is V essential to obtain the leave of the Court. The granting of leave is within the discretion of the Court. The Court, however, is to exercise its discretion judicially and according to well-established principles. Further, unlike Rules 3 and 4, no limitation is prescribed for presentation of an application under this rule and no penalty is laid down for failure to substitute the person on whom the interest of the

deceased plaintiff or defendant was devolved. Therefore, the right to make an application under this rule is a right which accrues from day to day and can be made at any time during the pendency of a a suit. There is no abatement under this rule."

59. The Hon'ble Court was considering the period of the limitation within which an assignee or a transferee pendente lite could approach the court for impleadment. This is not the issue presently with which we are concerned and forming the subject matter of the appeal.

60. In ***Raj Kumar v. Sardari Lal & Ors.*** ²⁹ the right of a transferee pendente lite came up for consideration in which Section 146 of the CPC and Order 22 Rule 10 of the CPC were considered. In deciding the said issue the Hon'ble Supreme Court has stated as follows:

"8. A lis pendens transferee from the defendant, though not arrayed as a party in the suit, is still a person claiming under the defendant. The same principle of law is recognized in a different perspective by Rule 16 of Order 21 of the CPC which speaks of transfer or assignment inter vivos or by operation of law made by the plaintiff-decree-holder. The transferee may apply for execution of the decree of the Court which passed it and the decree will be available for execution in the same manner and subject to the same conditions as if the application were made by the decree-holder. It is interesting to note that a provision like Section 146 of the CPC was not to

²⁹ 2004(2) ICC 1: 2004 (2) SCC 601

be found in the preceding Code and was for the first time incorporated in the CPC of 1908. In Order 21, Rule 16 also an explanation was inserted through amendment made by Act No. 104 of 1976 w.e.f. 1-2-1977 whereby the operation of Section 146 of CPC was allowed to prevail independent of Order 21, Rule 16, CPC.

9. A decree passed against the defendant is available for execution against the transferee or assignee of the defendant- judgment-debtor and it does not make any difference whether such transfer or assignment has taken place after the passing of the decree or before the passing of the decree without notice or leave of the Court.

10. The law laid down by a Four-Judges Bench of this Court in Sm. Saila Bala Dassi v. Sm. Nirmala Sundari Dassi and another, 1958 SCR 1287, is apt for resolving the issue arising for decision herein. A transferee of property from defendant during the pendency of the suit sought himself to be brought on record at the stage of appeal. The High Court dismissed the application as it was pressed only by reference to Order 22, Rule 10 of the CPC and it was conceded by the applicant that, not being a person who had obtained a transfer pending appeal, he was not covered within the scope of Order 22, Rule 10. In an appeal preferred by such transferee this Court upheld the view of the High Court that a transferee prior to the filing of the appeal could not be brought on record in appeal by reference to Order 22, Rule 10 of the CPC. However, the Court held that an appeal is a proceeding for the purpose of Section 146 and further the expression "claiming under" is wide enough to include cases of devolution and assignment mentioned in Order 22, Rule 10. Whoever is entitled to be but has not been brought on record

under Order 22, Rule 10 in a pending suit or proceeding would be entitled to prefer an appeal against the decree or order passed therein if his assignor could have filed such an appeal, there being no prohibition against it in the Code. A person having acquired an interest in suit property during the pendency of the suit and seeking to be brought on record at the stage of the appeal can do so by reference to Section 146 of the CPC which provision being a beneficent provision should be construed liberally and so as to advance justice and not in a restricted or technical sense. Their Lordships held that being a purchaser pendente lite, a person will be bound by the proceedings taken by the successful party in execution of decree and justice requires that such purchaser should be given an opportunity to protect his rights. (emphasis supplied)

61. The attention of the Hon'ble Court was brought to the observation in **Surjit Singh** (*supra*) and it was distinguished on the grounds as observed in paragraph 14 of the said decision which states:

"14. Incidentally, we may observe that in Surjit Singh v. Harbans Singh [(1995) 6 SCC 50] the assignees pendente lite were refused by this Court to be brought on record as they had purchased the suit property after the passing of the preliminary decree and in clear defiance of the restraint order passed by the Court injuncting any alienation/assignment. It was a case of exercising discretion not to grant leave under Order 22 Rule 10 CPC, in the circumstances of the case, as in the opinion of this Court permitting impleadment and recognizing the alienation/assignment would amount to defeating the ends of justice and the prevalent public policy. That case is clearly distinguishable." (emphasis supplied)

62. It would thus appear that the transferee was not aware of the pendency of the suit which is not the case we are presently considering. While in the facts of the case of state of **Raj Kumar** (supra) the respondent no. 4 therein had purchased the suit property from the respondent nos. 2 and 3 by a registered deed of sale, during the pendency of a civil suit and the said respondent no. 4 in that case was not aware of the pendency of the suit and the vendors had rather stated in the sale deed that the property was not a subject matter of any litigation, the factual backdrop of the instant case shows that the substituted appellant herein was aware of the pendency of the partition suit before entering into the contract of sale with Gayatri.

63. In **Chander Bhan (D) through LR Sher Singh v. Mukhtiar Singh & Ors.**,³⁰ the right of a transferee pendente lite was considered and in paragraph 16 the following observation was made:

“16. The object underlying the doctrine of lis pendens is for maintaining status quo that cannot be affected by an act of any party in a pending litigation. The objective is also to prevent multiple proceedings by parties in different forums. The principle is based on equity and good conscience. This Court has clarified this position in a catena of cases. Reference may be made here of some, such as : Rajendra Singh v. Santa Singh, (1973) 2 SCC 705 : AIR 1973 SC 2537; Dev Raj Dogra v. Gyan Chand Jain, (1981) 2 SCC 675; Sunita Jugalkishore Gilda v. Ramanlal Udhoji Tanna, (2013) 10 SCC 258: 2014 (1) ICC (SC) 472”.

³⁰ 2024 (3) ICC 70 (SC): AIR 2024 SC 2267

64. In considering the factual aspect of the said matter the observations of the Hon'ble Supreme Court are very relevant and apt in relation to the present dispute. The said paragraphs are reproduced below:

“20. In other words, the appellant filed a suit for permanent injunction on 21.07.2003 and obtained an order of temporary injunction on 28.07.2003. As on 21.07.2003 the doctrine of lis pendens would take its effect. The release deed executed by respondent no. 3 in favour of respondent no. 4 was of 28.07.2003, which is subsequent to the filing of the suit. Respondent no. 4 executed the registered sale deed in favour of respondents 1-2 on 16.06.2004 which is during the operation of the temporary injunction order. Thus, the alienation made by respondents, cannot operate against the interests of the appellant considering he had obtained an order of temporary injunction in his favour. The same position has been held by this Court in a recent decision of Shivshankara v. H.P. Vedavyasa Char (Supra), which has similar facts in the context of an injunction order.

21. Once it has been held that the transactions executed by the respondents are illegal due to the doctrine of lis pendens the defence of the respondents 1-2 that they are bonafide purchasers for valuable consideration and thus, entitled to protection under Section 41 of the Act of 1882 is liable to be rejected.” (emphasis supplied)

65. It has been categorically held in **Surjit Singh & Ors.** (*supra*) that if an alienation by way of assignment by a registered deed

is permitted notwithstanding the existence of an interim order in the form of status quo, it would defeat the ends of justice and prevalent public policy when the court intends the particular state of affairs to exist while it is in seisin of a lis that state of affairs is not only required to be maintained but it is presumed to exist till the court's order otherwise. The court in such circumstances has the duty as also the right to treat the alienation/assignment as having not taken place at all for its purposes.

66. The principle in **Surjit Singh** (*supra*) both as regard to fact and law squarely apply in the instant case. The trial court was very specific that none of the parties should be allowed to change the state of affairs as it existed on the date of the order of status quo. In **Surjit Singh** (*supra*) the Hon'ble Supreme Court in clear terms has described such kind of alienation by way of assignment in violation of order of injunction as non est and had even refused to recognise the right of such transferee to be added in the proceeding by taking aid of Order 22 Rule 10 of the Code. The law as it stands today clearly establish that a transferee by virtue of such clandestine transfer in violation of order of injunction acquires no title and such transferee is to be treated as non-existent as if no transfer in fact or in law had taken place. Such transfer the Apex Court comments: "would defeat the ends of justice and the prevalent public policy".

67. The learned Counsel for the appellant has referred to a catena of decisions to show that such transfer is saved by the doctrine of lis pendens. What however was overlooked consciously or otherwise is that the principle of lis pendens would not be applicable in the teeth of an order of injunction, whatever be the nature and form of such interim order. There cannot be any two opinions or views that the trial court wanted the parties not to alter the state of thing or affairs as it existed on the date of the order. The present appellant knowingly had purchased the said interest of the original appellant. In fact, the recital in the said conveyance as produced would show that he was conscious of the lis. In absence of any order of injunction or status quo possibly the ground urged by the appellant that the transfer would not be hit by the doctrine of lis pendens and hence is not void ab initio could have come to the rescue of the appellant. None of the decisions cited by the learned Counsel would show that the facts are similar to the facts at issue whereas **Surjit Singh** (*Supra*) is the decision which is squarely on the point.

68. There has been a paradigm shift in the law relating to transfer in violation of an existing order of injunction from not affecting the right, title and interest in the property of the party against whom such order of injunction has been passed unlike an order of attachment which makes the property custodia legis and only casts a prohibition to act in a particular manner to an alienation completely

non-est and refused to recognise the right of such transferee to be added in the proceeding by taking recourse to Order 22 Rule 10 of the Code.

69. The Supreme Court of India in **Surjit Singh** (*supra*) holds that when the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exit till the Court orders otherwise. The Court, in these circumstances, has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Therefore, the assignees could not have been impleaded by the Court as parties. (see **Bijali Naskar vs. Amalendu Saha**³¹, paragraph 9 : **Tara Narayan & Ors. v. Sheo Krishna & Ors**³², paragraph 10).

70. In fact **Surjit Singh** (*supra*) has been followed in various decisions including in **Vidur Impex & Trader Private Limited & Ors. v. Tosh Apartment Private Limited & Ors.**,³³ in which the Hon'ble Supreme Court held that the court will be justified in declining the prayer for impleadment of an applicant who is of guilty conduct or a beneficiary of a clandestine transaction or a transaction entered into and completed in violation of the order of injunction or any other restraint order. The legal consequences of an act in breach of or in

³¹ 1999(2) CHN 704: 1999 SCC OnLine Cal 204

³² 2010 SCC OnLine Cal 2064 : 2011 (1) CHN 237

³³ 2012 (8) SCC 384.

violation of the order of injunction should be undone and such transactions are void ab initio is judicially well settled in view of the decision of the Calcutta High Court in **Sujit Pal v. Pradip Kumar Sun & ors.**,³⁴ and the decision of Hon'ble Supreme Court in **Delhi Development Authority v. Skipper Construction Pvt. Ltd. & Anr.**³⁵.

71. In all the aforesaid decisions it has been held that the Courts in India are not only the courts of law but also courts of equity. The doctrine of lis pendens and any transaction in violation of an order of injunction do not stand on the same footing. The doctrine of lis pendens does not make the transfer void ab initio or illegal as in a later stage the said transaction can be perfected whereas any transaction entered into in violation of the order of injunction is non est in the eye of law.

72. In the judgment of **B. Narasimha Reddy v. T. Seshikanth Reddy**³⁶ a Division Bench of Telengana High Court denied a purchaser pendente lite the right of a transaction entered into with the defendant no.1 for purchase of the suit schedule property in the teeth of an order of injunction relying upon the decision in **Surjit Singh** (*supra*) and **Vidur Impex** (*supra*) as such transferee was “*guilty of contumacious conduct or is a beneficiary of a clandestine transaction or a transaction in violation of the restraint order*”.

³⁴ AIR 1986 Cal 220,

³⁵ 1996 (4) SCC 622

³⁶ AS No 32 of 2016, decided on 01.10.2024

73. In **Balwantbhai Somabai Bhandari v. Hiralal Somabhai Contractor (deceased) representative by L.R.s**³⁷ the Hon'ble Supreme Court while considering what would constitute a wilful disobedience and the effect of breach of undertaking has extensively dealt with the effect of a transfer in violation of an order of injunction.

74. The trend of decisions that had culminated in **Surjit Singh** (*supra*) and the subsequent decisions of the Hon'ble Supreme Court can be traced back to the decision of the **Chancery Division in Clarke v. Chadburn**³⁸ in which it was held that an act done in wilful disobedience of an injunction or court order is not only a contempt of court but also an illegal and invalid act which could not, therefore, effect any change in the rights and liabilities of others. Consciously or unconsciously the courts in India have applied the said principle in a large catena of decisions which have been summarised in **Balwantbhai Somabai Bhandari** (*supra*) as would be evident from paragraphs 81 to 90:

“81. A three-Judge Bench of this Court in SBI v. Vijay Mallya [SBI v. Vijay Mallya, (2024) 12 SCC 85 : 2022 SCC OnLine SC 826] , in clear terms said that apart from punishing the contemnor for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the Court so that any advantage secured as a result of such

³⁷ 2023 SCC Online SC 1139: AIR 2023 SC 4390

³⁸ 1985 (1) WLR 78

contumacious conduct is completely nullified. The approach may require the Court to issue directions either for reversal of the transactions in question by declaring said transactions to be void or passing appropriate directions to the authorities concerned to see that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.

82. It would be pertinent, in this context, to refer to the decision of the Chancery Division in Clarke v. Chadburn [Clarke v. Chadburn, (1985) 1 WLR 78] , wherein it was held that an act done in wilful disobedience of an injunction or court order is not only a contempt of court, but also an illegal and invalid act which could not, therefore, effect any change in the rights and liabilities of others. Similar view was expressed by this Court in Satyabrata Biswas v. Kalyan Kumar Kisku [Satyabrata Biswas v. Kalyan Kumar Kisku, (1994) 2 SCC 266], wherein the contempt jurisdiction was invoked by the respondents against the appellants, and during the contempt proceedings, it transpired that a sub-tenancy was created while the status quo order was in operation. This Court held that creation of sub-tenancy was in violation of the status quo order and parties were relegated to the position as existed on the date of the status quo order. This Court, inter alia, observed thus : (Satyabrata Biswas case [Satyabrata Biswas v. Kalyan Kumar Kisku, (1994) 2 SCC 266] , SCC p. 276, para 23)

“23. ... Such an order cannot be circumvented by parties with impunity and expect the court to confer its blessings. It does not matter that to the contempt proceedings Somani Builders was not a party. It cannot gain an advantage in derogation of the rights of the parties, who were litigating originally. If the right of

sub-tenancy is recognised, how is status quo as of 15-9-1988 maintained? Hence, the grant of sub-lease is contrary to the order of status quo. Any act done in the teeth of the order of status quo is clearly illegal. All actions including the grant of sub-lease are clearly illegal.” (emphasis supplied)

83. We are aware of the two decisions of this Court one in *Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.* [*Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.*, (2013) 5 SCC 397 : (2013) 3 SCC (Civ) 1] and *T. Ravi v. B. Chinna Narasimha*, (2017) 7 SCC 342 : (2017) 3 SCC (Civ) 666]. In both these decisions, the view taken is that Section 52 of the Transfer of Property Act, 1882 (for short “the 1882 Act”) does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the court.

84. In *Thomson Press* [*Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.*, (2013) 5 SCC 397 : (2013) 3 SCC (Civ) 1] , T.S. Thakur, J. in his separate judgment while supplementing the judgment authored by M.Y. Eqbal, J., observed as under : (SCC p. 424, para 53)

“53. There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent court, we do not see any reason why the breach of any such

injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor.”
(emphasis supplied)

85. Thomson Press [Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd., (2013) 5 SCC 397 : (2013) 3 SCC (Civ) 1] referred to above has been relied upon in T. Ravi [T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342 : (2017) 3 SCC (Civ) 666] for the proposition that the effect of Section 52 of the 1882 Act is not to render transfers effected during the pendency of a suit by a party to the suit void; the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court.

86. This Court in DDA v. Skipper Construction Co. (P) Ltd. [DDA v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622] , held that the legal consequences of what has been done in breach of or in violation of the order of stay or injunction should be undone and the parties could be put back to the same position as they stood immediately prior to such order of stay or injunction to not let the defaulting party enjoy any undue advantage. This Court while relying upon cases decided by various High Courts held as under : (SCC pp. 635-37, paras 18-21)

“The contemnor should not be allowed to enjoy or retain the fruits of his contempt

18. The above principle has been applied even in the case of violation of orders of injunction issued by civil courts. In *Clarke v. Chadburn* [*Clarke v. Chadburn*, (1985) 1 WLR 78] Sir Robert Megarry V-C observed : (WLR pp. 80-81)

‘I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Wilful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some change in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach of the law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them.’

19. To the same effect are the decisions of the Madras and Calcutta High Courts in *Century Flour Mills Ltd. v. S. Suppiah* [*Century Flour Mills Ltd. v. S. Suppiah*, 1975 SCC OnLine Mad 73 : AIR 1975 Mad 270] and *Sujit Pal v. Prabir*

Kumar Sun [Sujit Pal v. Prabir Kumar Sun, 1985 SCC OnLine Cal 146 : AIR 1986 Cal 220 : (1985-86) 90 CWN 342] . In Century Flour Mills Ltd. v. S. Suppiah [Century Flour Mills Ltd. v. S. Suppiah, 1975 SCC OnLine Mad 73 : AIR 1975 Mad 270] it was held by a Full Bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the court, as a policy, to set the wrong right and not allow the perpetuation of the wrongdoing. The inherent power of the court, it was held, is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognise that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order.

20. *In Sujit Pal [Sujit Pal v. Prabir Kumar Sun, 1985 SCC OnLine Cal 146 : AIR 1986 Cal 220 : (1985-86) 90 CWN 342] a Division Bench of the Calcutta High Court has taken the same view. There, the defendant forcibly dispossessed the plaintiff in violation of the order of injunction and took possession of the property. The Court directed the restoration of possession to the plaintiff with the aid of police. The Court observed that no technicality can prevent the court from doing justice in exercise of its inherent powers. It held that the object of Rule 2-A of Order 39 will be fulfilled only where such mandatory direction is given for restoration of possession to the aggrieved party. This was necessary, it observed, to prevent the abuse of process of law.*

21. *There is no doubt that this salutary rule has to be applied and given effect to by this Court, if necessary, by*

overruling any procedural or other technical objections. Article 129 is a constitutional power and when exercised in tandem with Article 142, all such objections should give way. The court must ensure full justice between the parties before it.” (emphasis supplied)

87. This Court in *Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.* [*Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.*, (2012) 8 SCC 384 : (2012) 4 SCC (Civ) 1] , while deciding on a similar factual scenario held that the sale transactions conducted in teeth of the injunction passed by the Delhi High Court did not have any legal basis. This Court held as under : (SCC p. 414, para 42)

“42. ... At the cost of repetition, we consider it necessary to mention that Respondent 1 had filed suit for specific performance of agreement dated 13-9-1988 executed by Respondent 2. The appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when Respondent 2 entered into a clandestine transaction with the appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained Respondent 2 from alienating the suit property or creating third-party interest. To put it differently, the agreements for sale and the sale deeds executed by Respondent 2 in favour of the appellants did not have any legal sanctity. The status of the agreement for sale executed by the appellants in favour of Bhagwati Developers was no different. These transactions did not confer any right upon the appellants or

Bhagwati Developers. Therefore, their presence is not at all necessary for adjudication of the question whether Respondents 1 and 2 had entered into a binding agreement and whether Respondent 1 is entitled to a decree of specific performance of the said agreement.” (emphasis supplied)

88. *The decision of Vidur Impex [Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd., (2012) 8 SCC 384 : (2012) 4 SCC (Civ) 1] was relied upon by this Court in Jehal Tanti v. Nageshwar Singh [Jehal Tanti v. Nageshwar Singh, (2013) 14 SCC 689 : (2014) 3 SCC (Civ) 512 : AIR 2013 SC 2235] , wherein it was held that : (Jehal Tanti case [Jehal Tanti v. Nageshwar Singh, (2013) 14 SCC 689 : (2014) 3 SCC (Civ) 512 : AIR 2013 SC 2235] , SCC p. 695, para 13)*

“13. We may also notice Section 23 of the Contract Act, 1872, which lays down that:

‘23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless—

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy.’

In each of these cases, the consideration or object of an agreement is unlawful and every agreement executed with such an object or consideration which is unlawful is void. Since the sale deed was executed in favour of Respondent 1

in the teeth of the order of injunction passed by the trial court, the same appears to be unlawful.” (emphasis supplied)

89. Thus, although Section 52 of the 1882 Act does not render a transfer *pendente lite* void yet the court while exercising contempt jurisdiction may be justified to pass directions either for reversal of the transactions in question by declaring the said transactions to be void or proceed to pass appropriate directions to the authorities concerned to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.

90. The High Court declared all the sale deeds executed by the contemnors in favour of the purchasers as *non est*. The High Court ordered that the sale deeds stand cancelled and set aside. The contemnors were directed to restore the position which was prevailing at the time of the order dated 14-10-2015 [Harshad Somabhai Bhandari (Contractor) *v.* State of Gujarat, 2015 SCC OnLine Guj 6670] passed by the High Court. In our opinion, the High Court was fully justified in declaring the sale deeds as *non est* or void.”

75. The said decision also considered the effect of transfer pendent lite as considered in **Thomson Press (India) Ltd** (*supra*) and **T. Ravi v. B. Chinna Narasimha**,³⁹

76. Mr. Dutta has strenuously argued that the present case is required to be considered in the light of the law laid down in **Thomson Press (India) Ltd. v. Nanak Builders & Investors Pvt. Ltd. & Ors.**⁴⁰

³⁹ 2017 (7) SCC 342: AIR Online 2017 SC 582

77. It is submitted that the said decision has recognised that the principle that a transfer pendente lite is not illegal ipso facto jure but remains subservient to the pending litigation as observed in paragraph 49 and the learned Counsel has also relied upon the following passage from the said judgment:

“52. We may finally refer to the decision of this Court in Jayaram Mudaliar v. Ayyaswami [(1972) 2 SCC 200 : (1973) 1 SCR 139] in which were extracted with approval observations made on the doctrine of lis pendens in Commentaries on the Laws of Scotland, by Bell. This Court said: (SCC p. 217, para 43)

“43. ... Bell, in his Commentaries on the Laws of Scotland said, that it was grounded on the maxim: Pendente lite nihil innovandum. He observed:

‘It is a general rule which seems to have been recognised in all regular systems of jurisprudence, that during the pendency of an action, of which the object is to vest the property or obtain the possession of real estate, a purchaser shall be held to take that estate as it stands in the person of the seller, and to be bound by the claims which shall ultimately be pronounced.’”

53. There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an

⁴⁰ 2013 (5) SCC 397

injunction issued by a competent court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor.

54. The third dimension which arises for consideration is about the right of a transferee pendente lite to seek addition as a party-defendant to the suit under Order 1 Rule 10 CPC. I have no hesitation in concurring with the view that no one other than the parties to an agreement to sell is a necessary and proper party to a suit. The decisions of this Court have elaborated that aspect sufficiently making any further elucidation unnecessary. The High Court has understood and applied the legal propositions correctly while dismissing the application of the appellant under Order 1 Rule 10 CPC. What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order 22 Rule 10 CPC, which is as under:

“10. Procedure in case of assignment before final order in suit.—(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the

person who procured such attachment to the benefit of sub-rule (1).”

A simple reading of the above provision would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether independent of Order 1 Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order 1 Rule 10 CPC but the enabling provision of Order 22 Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by the counsel for the respondents that Order 22 Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party-defendant. Such being the position all that is required to be examined is whether a transferee pendente lite could in a suit for specific performance be added as a party-defendant and, if so, on what terms.”

78. In paragraph 22 of the said decision the Hon’ble Supreme Court after noticing **Surjit Singh** (*supra*) and **Savitri Devi v. District Judge Gorakhpur** ⁴¹ observed as follows:

⁴¹ 1999 (2) SCC 577

“22. While referring Surjit Singh's case this Court noticed that in that case there was no dispute that the assignors and the assignees had knowledge of the order of injunction passed by the Court. On those facts, this Court held that the deed of assignment was not capable of conveying any right to the assignee and the order of impleadment of the assignees as parties was unsustainable”. (emphasis supplied)

79. The decision in **Vidur Impex** (*supra*) was also considered in paragraph 25 of **Thomson Press** (*supra*) in which paragraph 41 of **Vidur Impex** (*supra*) was considered. For the present purpose paragraph 41.6 of **Vidur Impex** (*supra*) would be relevant:

“41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.” (emphasis supplied)

80. After considering all the said decisions the Hon’ble Supreme Court summed up its conclusion in paragraph 57 which is reproduced below:

“57. To sum up:

57.1. The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the defendant owners in the suit.

57.2. *The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.*

57.3. *Since the appellant has purchased the entire estate that forms the subject-matter of the suit, the appellant is entitled to be added as a party-defendant to the suit.*

57.4. *The appellant shall as a result of his addition raise and pursue only such defences as were available and taken by the original defendants and none other.” (emphasis supplied)*

81. Paragraph 57.1 in our view is to be read along with **Surjit Singh** (*supra*) and **Vidur Impex** (*supra*). The decision in **Vidur Impex** (*supra*) was subsequently considered in **Jehal Tanti & Ors. v. Nageshwar Singh (deceased) through LRs.**⁴² in paragraph 11 of the said decision and for the sake of convenience we reproduce the same paragraph:

“11. *The same issue was considered in Vidur Impex and Traders (P) Ltd. v. Tosh Apartments (P) Ltd. [(2012) 8 SCC 384 : (2012) 4 SCC (Civ) 1], and it was held : (SCC p. 414, para 42)*

“42. ... At the cost of repetition, we consider it necessary to mention that Respondent 1 had filed suit for specific performance of agreement dated 13-9-1988 executed by Respondent 2. The appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when Respondent 2 entered into a clandestine

⁴² 2013 (14) SCC 689

transaction with the appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained Respondent 2 from alienating the suit property or creating third-party interest. To put it differently, the agreements for sale and the sale deeds executed by Respondent 2 in favour of the appellants did not have any legal sanctity.” (emphasis supplied)

82. The Hon’ble Supreme Court also considered the efficacy of such order in the light of Section 23 of the Contract Act, 1872 in paragraph 13 in which it is stated below:

“13. We may also notice Section 23 of the Contract Act, 1872, which lays down that:

“23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless—

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy.”

In each of these cases, the consideration or object of an agreement is unlawful and every agreement executed with such an object or consideration which is unlawful is void. Since the sale deed was executed in favour of Respondent 1 in the teeth of the order of

injunction passed by the trial court, the same appears to be unlawful.” (emphasis supplied)

83. The aforesaid decision makes the sale deed in question non-est and void ab initio on both grounds, namely, it was executed in violation of an order of injunction and becomes unlawful under Section 23 of the Contract Act.

84. In ***Nasib Kaur & Ors. v. Colonel Surat Singh (Deceased) through LRs. & Ors.***⁴³ it has been held that the interest acquired by transferee, can only be the same as held by transferor that is that of the co-sharer who holds an unpartitioned share in a joint holding which is the subject matter for determination in a partition suit. In the instant case, Gayatri had only transferred her share in respect of the dwelling house and not in respect of any other properties. In view of our finding that the said transfer was legally not permissible, the question of a transferee claiming any share in the suit property or in any other property to which Gayatri had succeeded is inconsequential and immaterial.

85. In view of the fact that we are deciding against the substituted appellant to continue with the appeal as a transferee pendente lite and an assignee of Gayatri it is not required for us to decide on the applicability of Section 4 of the Partition Act which gives a right of pre-emption to the present appellants following the law laid

⁴³ 2013 (5) SCC 218

down in **Ghantesher Ghosh** (*supra*) paragraph 10. The said decision however, answered to the character of a dwelling house in paragraph 15 in which the Division Bench judgment of our Court in **Boto Krishna Ghose v. Akhoy Kumar Ghose**⁴⁴ was affirmed. In **Boto Krishna Ghose** (*supra*) it was held that a dwelling house of an undivided family has a linkage with the dwelling house which belongs to the family and which is not divided and that such dwelling house may be owned by members of such family who need not be joint in mess and that house itself should be undivided amongst the members of the family who are its owners. The emphasis is really on the undivided character of the house, and it is this attribute of the house which imparts to the family its character of an undivided family. For the members of the family may have partitioned all their other joint properties and may have separated in mess and worship, but they would still be an undivided family in' relation to the dwelling house so long as they have not divided it amongst themselves.

86. The conclusion of the Hon'ble Division Bench insofar as Section 4 of the Partition Act is concerned can be found in paragraph 17 which is stated below:

“17. As a result of the aforesaid discussion, it must be held that Section 4, of the Act can validly be pressed in service by any of the co-owners of the dwelling house belonging to undivided family pending the suit for partition till final decree

⁴⁴ AIR 1950 Cal 111: 54 CWN 660

is passed and thereafter even at the stage of execution of the final decree for partition so long as the execution proceedings have not effectively ended and the decree for partition has not been fully executed and satisfied by putting the shareholders in actual possession of their respective shares Beyond that stage, however, Section 4 will go out of commission”.

87. In **Rabindra Das Adhikari (since deceased) & Ors. v. Iswar Kishore Kishori Jew & Ors.**,⁴⁵ in dealing with the scope of addition of parties and in pleading legal representatives in the context of devolution the interest, it was observed that Order 22 Rule 10 of the CPC is based on the principles, *“that the carriage of the proceeding cannot be brought to an end because the interest of a party in relation to subject matter of the suit has devolved upon another during the pendency of the suit but the suit may be continued by or against such person acquiring interest with the leave of the Court. The discretion to implead or not to implead the parties to continue with the suit should be exercised judicially and not capriciously or arbitrarily. If the interest of the Appellant is claimed to have been assigned and/or devolved upon a person who intends to carry with the suit or appeal or the proceeding, the one and the foremost thing which the Court should consider whether he can continue with the suit or appeal or the proceeding if the original party can continue it.”*

⁴⁵ 2019 (1) ICC 455 (Cal); 2018 SCC OnLine Cal 1498

88. Factually, unlike **Rabindranath Das** (*supra*) there is declaration of share in favour of Gayatri. However, the stumbling block would be the discretion to implead a person who has acquired interest in violation of order of injunction. In view of **Surjit Singh** (*supra*) no such discretion can be exercised in favour of a transferee who has knowingly acquired interest in the property in violation of the order of injunction.

89. In light of the discussion above, we are not inclined to entertain the present appeal. The appeal stands dismissed.

90. There shall be no order as to costs.

91. Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Soumen Sen, J.)

I agree.

(Smita Das De, J.)