

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

**F.M.A.T. No. 42 of 2025
With
CAN 1 of 2025**

**Pradip Kumar Ganeriwala
Vs.
Rohan Ganeriwala and Ors.**

For the appellant	:	Mr. Rajeev Kumar Jain, Ms. Laila Khatun, Ms. Yamini Mahawar, Mr. Kunal Shaw
For the respondent no.1/plaintiff	:	Mr. Surajit Nath Mitra, Ld. Sr. Adv. Mr. Siddhartha Chatterjee, Mr. Abir Lal Ghosh, Mr. Shameek Ray, Mr. Niket Ojha
For the respondent no.5	:	Mr. Siddhartha Banerjee, Mr. C.K. Deora, Mr. Balaji Chakraborty Mr. Samriddha Sen Mr. Raja Baliyal
For the respondent no.18	:	Mr. Rachit Lakhmani, Mr. Chhandak Dutta, Mr. Vidhya Bhusan Upadhyay Mr. Arindam Banerjee Mr. Rajarshi Ganguly
For the respondent nos.20, 21 & 22	:	Mr. Bratin Kumar Dey, Ms. Anjana Banerjee

Heard on : 11.02.2025, 18.02.2025,
19.02.2025, 26.02.2025,
03.03.2025, 05.03.2025,
18.03.2025, 26.03.2025,
27.03.2025,

Hearing concluded on : 21.04.2025

Judgment on : 01.05.2025

Sabyasachi Bhattacharyya, J.:-

1. The Defendant no.2, one Pradip Kumar Ganeriwala, has preferred the present appeal against an order of temporary injunction passed in a suit filed by the plaintiff/respondent no.1, for declaration that a purported Deed of Partition and Settlement dated December 2, 2008, and a Deed of Declaration dated June 1, 2009 are void or voidable and seeking cancellation of the same, as well as for permanent injunction restraining the defendant No.2, his agents and assigns from relying on or taking any step on the basis of the said documents, for permanent injunction restraining the defendants/respondents from trying to recover the purported deeds from the office of the Additional District Sub-Registrar (ADSR), Alipore and for other ancillary reliefs.
2. In the connected temporary injunction application, the plaintiffs/respondent No.1 sought injunction restraining the defendants from relying upon the purported deeds and/or parting with possession or encumbering or removing and/or disposing of the property mentioned in Schedules A, B, and C of the suit.

3. Schedule-A comprises a Mumbai property, situated at Juhu Tara Road, Juhu, Mumbai 400049, whereas Schedule-B comprises all bank accounts maintained in the name of Biwanath Ganeriwala HUF (hereinafter referred to as “BHUF”) and Schedule-C comprises all demat accounts opened for the corpus of BHUF as described therein.
4. The plinth of the plaint case is that the plaintiff is a coparcener in BHUF and claims title on the basis of such claim.
5. The brief history of the case is that the Biswanath Ganeriwala, the *Karta* of BHUF, constituted the HUF in the year 1974 and died on August 3, 1994, leaving behind his last Will and Testament dated January 15, 1994, bequeathing all his properties to BHUF, barring two IBP dealerships. Probate was granted in respect of the said Will in favour of the executors, namely Pradip Kumar Ganeriwala (defendant no.2) and Deepak Kumar Ganeriwala (defendant no.3), both sons of Biswanath.
6. A purported Deed of Partition and Settlement was executed between the sons of Biswanath, who are defendants in the present suit, allegedly on the basis of a family arrangement. Pursuant to the said deed, a purported Deed of Declaration was executed on June 1, 2009, both of which deeds are challenged in the suit.
7. The plaintiff alleges that he was born on March 13, 1988 and attained majority on March 12, 2006. However, despite him being a coparcener and a major on the relevant dates, the deeds of partition and declaration were executed in the years 2008 and 2009 respectively without impleading him, giving an impression that his estate was

represented by his father, namely Dilip Kumar Ganeriwala, the defendant no.4 in the suit. It is alleged that defendant nos. 2 and 4 perpetrated fraud by leaving out the plaintiff and entering into such deeds behind his back, on a false representation that the plaintiff was a minor on the said dates and his interest was represented by his father, the defendant no.4.

8. The plaintiff claims that he came to know about the impugned deeds in early July, 2003, upon entering appearance in a partition suit filed in respect of the suit properties by defendant No.5 in the present suit, namely Manoj Kumar Ganeriwala and being served with a copy of the pleadings therein. On July 6, 2023, the petitioners issued a letter to the ADSR, Alipore not to register the partition deed. Since he was not yet aware of the contents of the deed, he had erroneously stated in the letter that he was a signatory to the partition deed, although it would be found from the deed itself that he was not.
9. Upon subsequently getting copies of the deeds and a copy of an application under Order VII Rule 11 of the Civil Procedure Code filed by the defendant No.2/appellant herein for rejection of the plaint in the said partition suit (Title Suit No. 423 of 2003), the plaintiff became aware of the contents of the deeds and instituted the present suit and filed the connected injunction application.
10. Learned counsel for the appellant assails the impugned temporary injunction order on several grounds. First, it is contended that the suit itself is barred by Section 80 of the Code of Civil Procedure in view of the non-service of prior notice under the said provision on the proforma

defendant no. 25, that is, the Additional District Sub-Registrar (ADSR), Alipore.

11. Secondly, it is contended by the appellant that the suit is barred by limitation. Although knowledge of the impugned deeds has been pleaded by the plaintiff/respondent no. 1 to be from December 1, 2023, a prior letter dated July 6, 2023 to ADSR issued by the plaintiff, where he admitted to be a signatory of the partition deed, indicates that the date of knowledge mentioned in the suit was incorrect. In any event, it is alleged that the limitation should be counted from the date of execution of the assailed deeds.
12. Learned counsel appearing for the appellant vehemently raises the issue that the Trial Court at Alipore did not have territorial jurisdiction to entertain the suit, which hits at the very maintainability of the suit and consequentially, the lack of *prima facie* case to grant injunction. It is argued that the Mumbai property, described in Schedule-A of the plaint, is not a part of the schedule of the partition deed. Moreover, the reliefs sought in the plaint do not pertain to the suit properties at all. Thus, the plaint does not disclose any cause of action in respect of the suit properties as well as no relief has been claimed in respect of the said properties. The Mumbai property squarely lies outside the jurisdiction of the Trial Court.
13. Moreover, the Deed of Declaration, which deals with the Mumbai property, was notarized before the Metropolitan Magistrate, Calcutta which is also beyond the territorial jurisdiction of the Alipore Court. Hence, it is contended that the impugned injunction order was passed

without territorial jurisdiction, particularly in respect of the Mumbai property.

14. Learned counsel for the appellant next contends that the plaintiff suppressed material facts, including a letter dated July 6, 2023 where he admitted to be a signatory to the partition deed and that the partition deed was acted upon by the parties. By a family arrangement of August 18, 1998, the five sons of Biswanath agreed that the defendant No.2 (appellant) Pradip, being the eldest son of Biswanath, became the *Karta* of the joint family and had been paying all rates and taxes and looking after the Mumbai Property and that the signatories to the family arrangement, executed in the form of an affidavit, had no objection and accorded their consent if the Mumbai premises be mutated in the records of the statutory authorities at Mumbai in the name of defendant No.2/appellant. The partition deed and the Deed of Declaration were executed subsequently in terms of the said family arrangement.
15. Learned Counsel relies on the judgment of *Kale and Others v. Deputy Director of Consolidation and Others*, reported at AIR 1976 SC 807, for the proposition that the parties to a family settlement are bound by the terms of the same, irrespective of the same not being registered, although compulsorily registrable. The parties thereto, after taking advantage under the arrangement, are debarred by estoppel to resile from the same or try to revoke it.
16. Learned counsel next submits that one Sanchaita Investment was the original owner of the Mumbai property. The same was purchased by

Biswanath, on behalf of BHUF, in a court sale. By an order passed by a Division Bench of this Court on March 1, 1999, Sanchaita Investment was directed to execute a deed of conveyance in favour of the highest bidder Biswanath and accordingly, upon concession of the coparceners/sons of Biswanath, the Mumbai property was registered in the name of the appellant by a registered Indenture dated July 7, 2009. Thus, the claims made by the plaintiff in respect of the Mumbai property are frivolous.

- 17.** It is submitted that the claims made in the present suit are contrary to the reliefs sought in Title Suit No.423 of 2023 by the defendant no.5 in the present suit, claiming his one/fifth share in the HUF.
- 18.** The delay of about fifteen years in completing the registration of the partition deed now impugned was due to non-payment of the deficit stamp duty and registration fees by the defendant no.4, the father of the plaintiff/respondent no. 1, who had presented it for registration before the appropriate authorities. Thus, it is argued that the impugned order should be set aside on the above counts.
- 19.** The respondent No.1, the primary defendant controverts all the above allegations. Learned senior counsel appearing for the said respondent contends that the suit has been filed challenging two deeds and as such is governed by Section 20, and not Section 16, of the Civil Procedure Code. As such, since all the defendants and the plaintiffs reside within the territorial jurisdiction of the Alipore Judges' Court, the trial court had ample jurisdiction to take up the same.

- 20.** Alternatively, even if suit is deemed to be one in respect of immovable property, since part of the property is situated at Rowland Road, Kolkata-700 020, which falls within the territorial jurisdiction of the the Alipore Judges' Court, the said Court has territorial jurisdiction to entertain the suit. Moreover, the Partition Deed was executed within the jurisdiction of the trial court. The Deed of Declaration was purportedly executed by persons, all of whom reside within the territorial Jurisdiction of the trial court, was executed in Kolkata and at best, it is an arguable question as to whether the place of execution fell within the territorial jurisdiction of the trial court. The subsequent notarization of the same within the jurisdiction of the Metropolitan Magistrate at Calcutta is immaterial.
- 21.** Regarding limitation, it is argued that as per the plaint, the plaintiffs first came to know of the impugned deeds in December, 2023. Even if it is construed that the letter dated July 6, 2023, indicates knowledge of the plaintiff regarding such deeds, the suit, filed in the year 2024, comes within the limitation period. Since the plaintiff/respondent no.1 was not a signatory to the impugned deeds, the question of knowledge arising from the date of execution of the deeds does not arise.
- 22.** In respect of Section 80 of the Code of Civil procedure, learned senior counsel argues that no relief has been sought against the proforma defendant no. 25 and, as such, non-service of prior notice under the said provision is not fatal to the suit.

- 23.** The non-disclosure of the letter dated July 6, 2023 by the plaintiff is not a material fact and, thus, does not tantamount to suppression of any material fact, it is argued.
- 24.** Although an Indenture by Sanchaita to the appellant's HUF dated July 7, 2009 has been subsequently disclosed by the defendant no. 2/ appellant, it is argued that the information obtained from the concerned registration authorities in Mumbai reveals that only a declaration dated May 4, 2010 was registered, and not the attachments/annexures thereto, which include the Indenture. In any event, the Indenture, it is argued, was executed contrary to the order of the Division Bench of this Court and, as such, did not confer any title on the appellant.
- 25.** The appellant has alleged that knowledge of the deeds was derived by the plaintiff from the plaint of the Mumbai suit filed by the appellant. However, since the plaintiff /respondent no.1 was never a party thereto, no such question arises. There is nothing on record to show that the partition deed impugned herein or the consequential deed of declaration was acted upon by members of BHUF. In fact, the parties have been residing in the property at Rowland Road, occupying different portions of the same and there was never any act done by the parties in terms of the impugned deeds.
- 26.** In any event, the plaintiff was not a party to any of the documents-in-question or the family arrangement claimed by the appellant. Further, it has been admitted by the appellant in his stay application before this Court that BHUF has not yet been dissolved. Thus, the arguments to

the effect that the said HUF has since being dissolved by the impugned deeds is not tenable in the eye of law.

- 27.** The other sets of respondents who are contesting the present appeal primarily contend that some of them were also major coparceners of BHUF at the time of execution of the impugned deeds and were similarly deprived as the plaintiff. However, till date no challenge has been thrown by the said respondents to the deeds and, as such, much stress cannot be laid on the stand taken by the said respondents, apart from the fact that they are supporting the plaintiffs/respondent no.1 in principle.
- 28.** In the factual backdrop as discussed above and on the arguments of the parties, we proceed to decide whether the learned Trial Judge acted within the parameters of law and facts in granting the temporary injunction, dealing with the cardinal questions involved as we go along. Although the extensive arguments made by the parties virtually cover the panorama of all aspects involved in the suit itself, we are conscious that the hearing of an injunction application cannot be converted to a mini-trial of the suit, more so in an appeal preferred against the same, where the scope of enquiry is further limited to the legality of the impugned order within the parameters of grant injunction.

Section 80, Code of Civil Procedure

- 29.** No relief has been claimed in the suit against the proforma defendant No.25, the ADSR (Alipore), which is the only authority involved, the rest of the parties being arrayed in their individual capacities. The proforma

defendant is merely a 'proper' party and not a 'necessary' party. As such, the rigours of Section 80, which mandates prior notice to the State or its instrumentalities, is not attracted in the present case at all.

Territorial Jurisdiction

- 30.** As rightly contended by the plaintiff/respondent no.1, although certain properties, movable and immovable, have been mentioned in the Schedules of the plaint, the principal relief claimed in the suit is declaration that the Deed of Partition and Deed of Declaration-in-question are void and/or voidable and seeking cancellation of the same. The other reliefs are consequential and ancillary thereto.
- 31.** Thus, strictly speaking, the principal relief sought in the suit does not pertain directly to immovable properties; rather, the same comes within the residuary provision of Section 20 of the Code of Civil Procedure and, to determine the jurisdiction, we are to look at the residence of the defendants, most of whom reside within the territorial jurisdiction of the Trial Court.
- 32.** Also, the partition deed having been executed within the territorial jurisdiction of the Trial Court, at least part of the cause of action for the suit arises within the said jurisdiction.
- 33.** The Deed of Declaration was notarized before the Metropolitan Magistrate at Calcutta, which is outside the jurisdiction of the Alipore Court, where the suit has been instituted. However, notarization does not confer any special status on the document and the challenge thrown in the suit is to its very execution and effect. The place of

execution of the deed is not mentioned specifically therein and it is possible that since all the signatories thereto reside within the territorial jurisdiction of the Trial Court, it was executed within such jurisdiction. The said question is a mixed question of fact and law and cannot be decided at the outset.

- 34.** Even if the properties prescribed in the Schedules of the suit are not entirely amenable to the territorial jurisdiction of the Trial Court, the movable properties mentioned therein, being the bank accounts and demat accounts, can be operated from the territorial jurisdiction of the Trial Court, particularly in the modern days of online banking, and as such, arguably the trial Court also has jurisdiction to decide the suit.
- 35.** Moreover, the suit, as framed, does not seek any primary relief in respect of the said properties. The properties are brought into the hotchpot of the suit merely because the impugned deeds cover the said properties and, thus, the properties are consequentially affected by the outcome of the suit, although such outcome would directly pertain to the legality and validity of the documents-in-question.
- 36.** The appellant alleges that the partition deed does not cover the Mumbai property within its schedule. At first glance, the said argument is attractive. However, the impugned Deed of Partition and Settlement dated December 2, 2008 lays down the arrangement between the parties in various manners. The effect of the same is not restricted to the properties mentioned in the schedule thereof, but in Clause 16 of the same, it has been mentioned that on the dissolving and the dissolution of BHUF, the immovable property in Mumbai “*has been*

allotted to Pradip Ganeriwala (HUF) the second party herein free from all encumbrances and/or any claims or rights from the first, third, fourth, fifth, sixth parties hereto and their respective heirs descendants and the branches of the HUF". Thus, Clause 16 brings the Mumbai property within the fold of the partition deed and also declares the relinquishment of the claim regarding such property by the other sons of Biswanath than defendant no.2/appellant. Thus, rights are created/extinguished in respect of the Mumbai property as well by Clause 16 of the partition deed, which is in the nature of a Deed of Settlement as well.

- 37.** In Clause 17 of the said Deed, the five sons of Biswanath, who are defendants in the present suit, represented that for the purpose of perfecting the Deed of Partition and the act of partition of the BHUF properties, they acted and represented their respective branches of HUF consisting of their respective wives, sons, daughters, grandsons and grand-daughters. Thus, the rights of the plaintiff, who was a major coparcener at that point of time in respect of BHUF, were purportedly represented by the signatories to the partition deed not only in respect of the other properties mentioned in the Schedule of the Deed but also the Mumbai property.
- 38.** Again, the Deed of Declaration which is impugned in the suit is a tell-tale document in its own way. In Clause 6 of the said Deed, the signatories thereto, being only the sons of late Biswanath, recorded their agreement and consent to the mutation of the name of only the defendant no.2's HUF in respect of the Mumbai property. As per the

said clause, such mutation was to be in the capacity of absolute owner of the said property with *Khas* possession, in exclusion of defendant nos.1 to 5, the widow and the sons of Late Biswanath.

- 39.** In Clause 7 thereof, the signatories admitted that defendant no.2 was and would be the exclusive owner of the Mumbai property and none of the other signatories would have any right thereto. Since the said document was notarised in the City of Kolkata, before the Metropolitan Magistrate, Eighth Court at Calcutta, it cannot be in doubt that it was executed in the city of Kolkata. The place of execution of the same is not mentioned anywhere in the document itself but it is seen that all the parties thereto reside at 16B, Rowland Road, Kolkata, which comes within the territorial jurisdiction of the Trial Court. The notarisation of the document does not confer any special status on it, nor is such notarisation mandatorily required as such by law. Hence, notarisation is not an important determinant in ascertaining territorial jurisdiction to challenge the same. It is arguable as to where it was actually executed and, as such, the said issue cannot be decided at the injunction stage, being debatable, and has to be left for the trial stage.
- 40.** In such view of the matter, this Court is of the *prima facie* opinion that the trial court had territorial jurisdiction to entertain the suit and grant injunction as it did.

Limitation

- 41.** It is the primarily the plaint which is to be looked into at this stage for ascertaining limitation. The plaintiff claims that he first came to know

of the deeds in December 2023. As per the plaint pleadings, such averment is plausible. Reading together the averment in the written objections filed by the appellant and the injunction application of the respondent no.1, the plaintiff shot off a letter dated July 6, 2022 to the ADSR, Alipore (proforma defendant no.25) asking the latter not to register the purported partition deed, which showed knowledge of the existence of such a partition deed attributable to the plaintiff on such date. However, mere knowledge of the existence of such deed, in a nebulous state, might not necessarily be the first date of actual knowledge of the contents of a document. That the plaintiff/respondent no.1 had not yet gone through the contents of the deed on that date, is evident from the statement in the letter that he was a signatory thereto. Such statement, being patently contrary to the partition deed itself, which is relied on by none other than the defendant no.2/appellant, must be construed to be a clear indicator that on the date of writing the letter dated July 6, 2023, the actual contents of the disputed partition deed were not within the knowledge of the plaintiff. Subsequently, after entering appearance in the previous suit filed by the defendant no.5, being Title Suit No.423 of 2023 and having been served with a copy of the application under Order VII Rule 11 of the Code filed by the defendant no.2/appellant, the plaintiff learnt of the contents of the deed and only thereafter filed the suit.

- 42.** In any event, whether the plaintiff had knowledge of the deeds-in-question in July or December, 2023, is immaterial, since either way the suit filed in 2024 would be well within the statutory period of

limitation. The deeds themselves show that the plaintiff was not a signatory in any of them; rather, the defendant no. 4, the father of the plaintiff, signed on his behalf by giving out that the plaintiff was a minor on the relevant dates.

- 43.** In the absence of anything to show that the plaintiff had knowledge of the said deeds before the year 2023, the question of limitation partakes the character of a mixed question of law and fact at best and, hence, it cannot be said *ex facie* that the suit is barred by limitation.
- 44.** Thus, this objection of the defendant no.2/appellant cannot but be turned down as well.

Suppression of material facts

- 45.** The non-disclosure of the letter dated July 6, 2023 by the plaintiff is not germane to the adjudication of any of the issues involved in the suit at all. The defendant no.2/appellant claims that the plaintiff has suppressed that the Deed of Partition and Settlement and the Deed of Indenture in question were acted upon by the parties. In the absence of any *prima facie* evidence thereof, we cannot come to a conclusion that those deeds were actually acted upon and such fact was suppressed by the plaintiff. Hence, we do not find any instance of suppression of any material fact.
- 46.** The appellant further alleges that the plaintiff's father, the defendant no.4, had signed the document and cannot now deny the same. However, the fact that defendant no.4, the father of the plaintiff, was a signatory to the document does not make it binding on the plaintiff. At

the relevant point of time, the plaintiff was a major, since his date of birth has not been disputed by the defendant no.2/appellant. Thus, in any event, his father could not have represented his estate on the dates when the impugned deeds were executed. The parties are governed by the Mitakshara School of Hindu Law and, thus, the plaintiff was a coparcener in the property the moment Biswanath, the *Karta* of BHUF, met his demise.

- 47.** Also, the plaintiff has categorically alleged fraud having been practised by the defendant no.2 as well as defendant no.4 and the other sons of Biswanath Ganeriwala by executing the assailed deeds by fraud and misrepresentation. Thus, the very authority of the plaintiff/appellant's father and the other sons of Biswanath to sign the deeds-in-question has been categorically challenged in the present suit and there does not arise any question of suppression on such front. We, accordingly, do not find the suppression of any material fact by the plaintiff.

Merits

- 48.** On merits, both parties admit certain facts which affect the Mumbai property.
- 49.** It is an admitted position that there was an auction sale of the Mumbai property by its original owner Sanchaita Investment. Such sale was treated to be a Court sale by dint of a Division Bench order of this Court dated August 8, 1986 passed in Matter No.779 of 1996. In the said order, the Division Bench recorded that Biswanath Ganeriwala was a successful bidder and directed the Mumbai Property to be

transferred to the successful bidder by execution of a Deed of Conveyance by the Commissioner, Sanchaita Investment by treating the same as a court sale. After the sale was concluded, the Commissioner was directed to deliver the possession of the property to the purchaser.

- 50.** A Sale Certificate was subsequently issued pursuant thereto. It was categorically mentioned in the said certificate that Biswanath Ganeriwala had participated in the auction sale on behalf of his HUF. By virtue of the Sale certificate, the Mumbai property was transferred to BHUF (a copy of the Sale Certificate is annexed at Pages 444 to 449 of the stay application filed in connection with the present appeal).
- 51.** The Sale Certificate itself, in law, is conclusive proof of the title of the purchaser and as such, there is no denying the fact that by virtue of the same, BHUF became the absolute and exclusive owner of the Mumbai property.
- 52.** Meanwhile, Biswanath Ganeriwala had met his demise, leaving a Will, bequeathing his entire assets, including the Mumbai property, in favour of BHUF. The said Will was probated on March 26, 1997.
- 53.** Whatever happened subsequently in respect of the Mumbai property was arguably bad in law, since all the coparceners of BHUF, which was the owner of the Mumbai property, were not represented in any of the subsequent germane documents. The Affidavit affirmed on August 18, 1998, annexed at Pages 450 to 452 of the stay application filed in the present appeal, shows that only the defendant nos.1 to 5 were parties thereto, being the widow and sons of Late Biswanath. They, among

themselves, admitted that they had jointly become the owners of the property after the death of Biswanath. A very important facet of the said Affidavit is that the same did not, by itself, purport to transfer absolute title in any manner in favour of the defendant no.2/appellant, nor was the same registered. Clause 4 of the same merely recorded that Pradip, the defendant no.2/appellant, being the elder son of Biswanath Ganeriwala, had formed his own HUF and became the *Karta* of the joint family. The expression “joint family” obviously referred the BHUF. In such capacity, it was recorded that the defendant no.2/appellant had been paying all rates and taxes and looking after the Mumbai property.

- 54.** Clause 5 of the Affidavit recorded that the signatories thereto had no objection and accorded their consent if the said property was mutated in the records of the statutory authorities at Mumbai in the name of Pradip Kumar Ganeriwala.
- 55.** It is trite law that mere mutation does not translate into conferment or transfer of title. Hence, nothing in the said Affidavit dated August 18, 1998 amounted to transfer of any title to the Mumbai property in favour of the present appellant. In any event, the said Affidavit was a notarised document on a Rupees Ten non-judicial stamp paper and could not confer any title in law.
- 56.** The next chapter in the saga is an order dated March 1, 1999, whereby another Division Bench of this Court proceeded on the premise that by the Sale Certificate mentioned above, the Commissioner of Sanchaita Investment had sold in auction the property-in-question in favour of

BHUF. It was submitted by the defendant no.1 to 5 herein before the court that the present appellant was then the *Karta* of BHUF, which was then said to exist under the nomenclature “Pradeep Kumar Ganeriwala HUF”. Thus, it is clear from the order dated March 1, 1999 that it was represented by the defendant no.2’s HUF, which was the petitioner therein, that the defendant no.2 acted as the *Karta* of BHUF itself, which was existing till then, albeit under the nomenclature of the HUF of defendant no.2. Thus, the court did not proceed on the premise that Pradip or his HUF had any manner of right in the property but on the premise that the Sale Certificate conclusively conveyed the title in the Mumbai property in favour of BHUF, which itself was subsisting, but in a different name. In the above backdrop, the court directed the name of Pradip Kumar Ganeriwala HUF to be mutated in respect of the Mumbai property. The Division Bench, in its order dated March 1, 1999, in fact reiterated that since the property was undoubtedly sold in public auction and the Sale Certificate was also issued by the Commissioner (in the name of BHUF), the court need not enter into the question as to the status of the claimant therein and only directed to other respondents therein to give effect to the Sale Certificate issued by the Commissioner of Sanchaita Investment, which was an annexure to the writ petition before the court, by making necessary mutation “in accordance with law after giving an opportunity of hearing to all interested parties”, including the petitioner. Thus, the expression “in accordance with law” mandated that the mutation would be in line with the Sale Certificate, by virtue of which BHUF was the owner of the

Mumbai property, and the property was merely to be mutated in the name of the defendant no.2/appellant.

57. Thus, on the *prima facie* premise of the documents which have been placed before this Court and the Trial Court as discussed above, the position till that date was that BHUF was the undisputed owner of the Mumbai property and it was merely to be mutated in the name defendant no.2's HUF for taking appropriate steps in respect of the said property on behalf of the BHUF. After the execution of the Sale Certificate, there could not in any event be any further transfer unless all the coparceners of BHUF were parties to such transfer.
58. However, in the teeth of such legal position and apparently flouting the order of the Division Bench, which mandated the mutation to be done in accordance with law, the purported notarized Deed of Declaration was executed on August 3, 2009 whereby, in a twist given to the facts, the sons of Late Biswanath expressed "no objection" to the mutation of the property in the name of Pradip Kumar Ganeriwala HUF "as being the absolute owner of the said property with *khas* possession", to the exclusion of the widow and sons of Late Biswanath, in the process excluding the other coparceners of the property, including the plaintiff/appellant as well, behind their back.
59. Thus, apart from the fact that the widow and sons of Late Biswanath, by themselves and in exclusion of the other coparceners of BHUF did not have the *locus standi* to transfer absolute title in the property in the absence of the other coparceners, including the plaintiff, the notarised but unregistered Deed of Declaration could not even purport to operate

as an agreement for sale, let alone an instrument of transfer of the Mumbai property in the eye of law.

60. The impugned Deed of Partition and Settlement is vitiated by the same legal flaws as the Deed of Declaration. In the said document, the only signatories were the widow and the sons of Late Biswanath, although on such date, the plaintiff and the other coparceners of the BHUF of the plaintiff's generation were left out. The parties therein went so far as to mention the plaintiff as "Master Rohan Ganeriwala" thereby giving an impression that he was a minor who was represented by his father Dilip Kumar Ganeriwala, the present defendant no.4, although he had already attained majority then. On the basis of the facts which are before the court, *prima facie* such statement was a gross misrepresentation of the actual facts and accordingly, a strong *prima facie* case of fraud and misrepresentation has been made out, sufficient to taint the said Partition Deed.

61. The appellant also seeks to rely on a subsequent Deed of Indenture executed in his favour by the Sanchaita Investment. However, once the Sale Certificate was issued by the Sanchaita Investment, pursuant to the direction of the Division Bench of this Court dated August 8, 1986, the transfer of property in favour of BHUF became conclusive and the Sale Certificate, in law, became conclusive proof of such title of the transferee. Hence, as on the date of execution of the purported Indenture in favour of the appellant dated July 7, 2009, Sanchaita Investment, the transferor, had already been divested of title in the

property and the said Deed of Indenture could not operate to convey or transfer any title whatsoever in favour of the HUF of the appellant.

- 62.** The information obtained by the appellant regarding the Deed of Indenture allegedly not being registered, however, does not evoke much confidence. If looked at properly, the same refers to a declaration. The Marathi transcript of the information slip, read with its English version, indicates that what was registered was not only a Deed of Declaration (“Ghoshana Patra”) but also a Deed of Conveyance (“Kharedadarakarun”) which was unilateral (“Ektarfi”). The annexures thereto were not duly stamped. We are not sure about what was annexed to the said document but the Marathi transcript, which is somewhat similar to Hindi, indicates that the declaration itself also was a Deed of Conveyance of sorts, although unilaterally executed.
- 63.** Be that as it may, such information becomes irrelevant, since we have concluded above that even if an Indenture was executed and registered on July 7, 2009, the transferor Sanchaita Investment did not have title in the property and as such, could not convey what it itself did not have. Thus, the reliance of the appellant on the purported Deed of Indenture in his favour dated July 7, 2009 is toothless and immaterial.
- 64.** That apart, such Indenture, even if executed, was vitiated in law, being contrary to the Sale Certificate which was itself purportedly a basis of the said Indenture, as well as in contravention of the orders of the Division Benches of this Court dated August 8, 1986 and March 1, 1999, apart from being tainted by fraud and misrepresentation.

- 65.** In view of the above observations, we are of the opinion that a strong *prima facie* case to go for trial has been made out by the plaintiff/respondent no.1, justifying the grant of injunction. The very activities of denial of title of the plaintiff on the part of the defendant no.2/appellant itself furnishes urgency and apprehension of irreparable injury if the injunction as prayed for is not granted.
- 66.** The reliance of the appellant on *Kale's Case* is irrelevant in the present context, since the so-called family arrangement relied on by the appellant was tainted by the non-joinder of all coparceners of BHUF as well as vitiated by fraud insofar as the plaintiff was made out to be a minor, represented by his father, despite the plaintiff having attained majority on the relevant date.
- 67.** The scope of the appellate court is limited while sitting in judgment over an injunction order and the appellate court cannot substitute its own views, even if an alternative view is possible, if the Trial Court does not commit any legal or factual error.
- 68.** On the basis of the conclusions arrived at by us above, we find that a strong *prima facie* case of injunction has been made out by the plaintiff and the other legal parameters of grant of injunction have also been fully satisfied. Accordingly, we do not find any reason to interfere with the impugned order.
- 69.** Hence, FMAT No. 42 of 2025 is dismissed on contest thereby affirming the impugned Order dated January 27, 2025 passed by the Learned Senior Judge (Senior Division), Second Court at Alipore, District: South 24 Parganas in Title Suit No. 1225 of 2024.

- 70.** CAN No. 1 of 2025 is accordingly dismissed as well.
- 71.** There will be no order as to costs.
- 72.** It is made clear that the merits of the issues involved in the suit have not been entered into by this Court, and the above findings are tentative in nature, confined to the adjudication of the appeal against the temporary order of injunction, and shall not be binding on the learned Trial Judge at the stage of final hearing of the suit. It will be open to the learned Trial Judge to decide the suit on its own merits without being unduly influenced by the tentative observations made above.
- 73.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)