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

INTERIM APPLICATION NO. 4623 OF 2022
IN
SUIT NO. 343 OF 2022

Variinder @ Rajan s/o Darrshan Khanna ... Applicant (Orig. Plaintiff)

IN THE MATTER BETWEEN:

Variinder @ Rajan s/o Darrshan Khanna ... Plaintiff
V/s.
Narresh Darrshan Khanna & Ors. ... Defendants

Mr. Ghanshyam Mishra a/w Ms. Ekta Bhalerao & Mr. Sujeet Chaudhary for Applicant/Plaintiff.
Mr. Nirman Sharma a/w Mr. Ansh Karnawat i/b Mr. Ashish Mishra for Defendant Nos. 1, 3 to 8 and 10.
Ms. Preeti D. Madan for Defendant Nos. 2 and 9.
Ms. Kavita Sharma i/b Ganesh & Co. for Defendant No. 11.
Ms. Kritika Joshi i/b Bhide and Associates for Defendant No. 13 – ICICI Bank.

CORAM : FARHAN P. DUBASH, J.

RESERVED ON : 27th APRIL 2026
PRONOUNCED ON : 27th JULY 2026

ORDER:

1. The Plaintiff has instituted the present Suit seeking, inter alia, a declaration that he is entitled to an undivided 1/5th share in the immovable and movable properties more particularly described in Exhibits "G" and "H" to the Plaint (hereinafter collectively referred to as the **"suit properties"**), on the premise

that the said properties constitute the properties of a Hindu Undivided Family (**"HUF"**) and/or the estate of his deceased mother, Mrs. Shashikala Darrshan Khanna (hereinafter referred to as the **"late mother"**). Consequential reliefs, including partition of the suit properties by metes and bounds, have also been sought.

2. The Suit further impugns various registered Gift Deeds stated to have been executed by the Plaintiff's deceased father, Mr. Darrshan Vilayati Khanna (hereinafter referred to as the **"late father"**), during the years 2012 and 2013 in favour of Defendant Nos. 1, 3 and 4, as also a subsequent registered Gift Deed dated 2021 executed by Defendant No. 4 in favour of Defendant No. 5 (hereinafter collectively referred to as the **"impugned Gift Deeds"**). According to the Plaintiff, the properties forming the subject matter of the impugned Gift Deeds are HUF properties in which he claims an undivided 1/5th share and, consequently, the late father could not have validly gifted or otherwise dealt with the said properties to the exclusion of the Plaintiff.

3. The Plaintiff has also challenged the testamentary dispositions allegedly executed by his parents. It is alleged that the late father executed a Will dated 25th April 2011 together with a Codicil dated 22nd October 2020, while the late mother executed a Will dated 14th November 1998. The Plaintiff seeks declarations that the said testamentary instruments are illegal, invalid, sham, bogus, forged, fabricated, manipulated and not binding upon him or in relation to the suit properties.

4. By the present Interim Application, the Plaintiff seeks interlocutory protection in respect of the suit properties pending the hearing and final disposal of the Suit. The principal reliefs sought are the appointment of the Court Receiver in respect of the suit properties and an order of temporary injunction restraining the Defendants from alienating, encumbering, parting with possession of, creating third-party rights in, or otherwise dealing with the suit properties. The Plaintiff also seeks an injunction restraining the Defendants from dispossessing him from Bungalow Nos. 14 and 14A situated at Chembur, Mumbai (hereinafter referred to as the **"Gulab View Bungalow"**), where he claims to be presently residing.

5. Before adverting to the rival submissions, it would be apposite to briefly notice the relationship between the parties, which is as follows:

(i) Late Darrshan Vilayati Khanna and Late Shashikala Khanna had five children, namely, Narresh Khanna **(Defendant No. 1)**, Harmiinder Khanna **(Defendant No. 2),** Raajesh Khanna **(Defendant No. 3)**, Poonam Khanna **(Defendant No. 4)** and Varinder Khanna **(Plaintiff).**

(ii) Sonam Narresh Khanna **(Defendant No. 5)** is the wife of Defendant No. 1, and Dimple Narresh Khanna **(Defendant No. 6),** Anisha Narresh Khanna **(Defendant No. 7)** and Yashraj Narresh Khanna **(Defendant No. 8)** are their children.

(iii) Yogini Harmiinder Khanna **(Defendant No. 9)** is the daughter of Defendant No. 2, whereas Manisha Raajesh Khanna **(Defendant No. 10)** is the daughter of Defendant No.3.

(iv) Defendant Nos. 11, 12, 14 and 16 are the co-operative housing societies in which, some of the immovable suit properties are situated.

(v) Defendant No. 13 is the bank that is in use, occupation and possession of some of the immovable suit properties described at serial nos. 2 to 4 of Exhibit "G" to the plaint under lease agreement/s (hereinafter, referred to as the **"leased shops"**).

(vi) Defendant No. 15 is the developer who has undertaken a redevelopment project in Defendant No.14 Society, wherein some of the immovable suit properties are situated.

6. For ease of reference, the immovable properties comprising the suit properties, as described in Exhibit "G" to the Plaint, are reproduced below:

EXHIBIT "G"

Sr. No.	***List of Immovable Properties***
1.	*Off. No. 110, admeasuring about 188 sq. ft. situated on 1st Floor, Acharya Commercial & Shopping Centre Co-Op. Society Ltd. Plot Bearing CTS No. 98, Village Wadhavli, Dr. C. G. Road, Chembur, Mumbai – 400074 along with share certificate no. 23 dated 18.9.1984 bearing distinctive share nos. 111 to 115.*
2.	*Shop no. 12, admeasuring about 388 sq. ft. situated on Gr. Floor, Acharya Commercial & Shopping Centre Co-Op. Society Ltd., Plot Bearing CTS no. 98, Village Wadhavli, Dr. C. G. Road, Chembur, Mumbai – 400074 along with share certificate no. 46 dated 29.6.1985 bearing distinctive share nos. 226 to 230.*
3.	*Shop no. 13, admeasuring about 379 sq. ft., situated at Gr. Floor, Acharya Commercial & Shopping Centre Co-Op. Society Ltd., Plot Bearing CTS no. 98, Village Wadhavli, Dr. C. G. Road, Chembur, Mumbai – 400074 along with share certificate no. 36 dated 4.2.1985 bearing distinctive share nos. 176 to 180.*
4.	*Shop no. 14, admeasuring about 388 sq. ft., situated on Gr. Floor, Acharya Commercial & Shopping Centre Co-Op. Society Ltd., Plot Bearing CTS no. 98, Village Wadhavli, Dr. C. G. Road, Chembur, Mumbai – 400074 along with share certificate no. 79 dated 14.6.1986 bearing distinctive share nos. 406 to 410.*
5.	*Bungalow No. 14, admeasuring about 1179 sq. ft. situated on Gr. Floor, The Mihishad Co-operative Housing Society Ltd., plot bearing CTS No. 172/10, Village Wadhavli, Dr. C. G. Road, Chembur, Mumbai – 400074 along with share certificate no. 37 dated 27.5.2009 bearing distinctive share nos. 131 to 135.*
6.	*Bungalow No. 14A, admeasuring about 897 sq. ft. situated on First Floor, The Mihishad Co-operative Housing Society Ltd., plot bearing CTS No. 172/10, Village Wadhavli, Dr. C. G. Road, Chembur, Mumbai – 400074 along with share certificate no. 54 dated 1.1.1982 bearing distinctive share nos. 266 to 270.*

Sr. No.	List of Immovable Properties
7.	*Garage No. 3, admeasuring about 180 sq. ft. situated at Kamal Phool Co-op. Housing Society Ltd. Plot CTS No. 463 to 465, Village Wadhavli, Chembur, Mumbai – 400074.*
8.	*Garage No. 4, admeasuring about 200 sq. ft. situated at Kamal Phool Co-op. Housing Society Ltd. Plot CTS No. 463 to 465, Village Wadhavli, Chembur, Mumbai – 400074.*
9.	*Garage No. 5, admeasuring about 162 sq. ft. situated at Kamal Phool Co-op. Housing Society Ltd. Plot CTS No. 463 to 465, Village Wadhavli, Chembur, Mumbai – 400074.*
10.	*Garage No. 6, admeasuring about 162 sq. ft. situated at Kamal Phool Co-op. Housing Society Ltd. Plot CTS No. 463 to 465, Village Wadhavli, Chembur, Mumbai – 400074.*
11.	*Office No. 502, admeasuring about 698.55 sq. ft. situated on 5th Floor, The Affaires, Plot No. 9, Sector – 17, Sanapada Road, Navi Mumbai.*
12.	*Work Shop Petitioner-21 in Vikas Compound, Dr. Choithram Gidwani Road, CTS No. 97 Chembur, Mumbai – 400074.*

7. Before adverting to the rival submissions on the merits of the present Interim Application, it would be apposite to briefly set out the material facts, to the extent necessary for its determination.

(i) The late mother passed away on 15th May 2003. The late father subsequently passed away on 15th January 2022.

(ii) According to the plaint, the immovable properties described at serial nos. 1, 5, 9 and 10 of Exhibit "G" were acquired by the late mother; those described at serial nos. 6, 11 and 12 were acquired by the late father; and the properties described at serial nos. 2, 3 and 4 were acquired jointly by the late father and the late mother. The plaint further discloses that the properties described at serial nos. 7 and 8 were acquired by Defendant No. 3. Notwithstanding the aforesaid, the Plaintiff asserts that all the suit properties constitute joint family/HUF properties of the Khanna HUF, of which the late father was the Karta.

(iii) The Defendants, on the other hand, dispute the very existence of the alleged Khanna HUF. According to them, the suit properties are the self-acquired properties of the late father, some of which were purchased by him in the name of the late mother and, upon her demise, stood transmitted to his name. It is their further case that, save and except the properties at serial nos. 7 and 8, which are stated to be the self-acquired properties of Defendant No. 3, and the property at serial no. 12, which continues to stand in the name of the late father, all the remaining immovable suit properties were dealt with by the late father during his lifetime by executing nine registered Gift Deeds in favour of some of his children.

(iv) A significant aspect of the Defendants' case is an affidavit dated 8th July 2001 admittedly executed by the Plaintiff (hereinafter referred to as the **"2001 Affidavit"**). The Defendants contend that, under the said affidavit, the Plaintiff unequivocally acknowledged that the immovable and movable properties of the late father and the late mother were their self-acquired properties and not ancestral or HUF properties. The Plaintiff is also stated to have declared therein that neither he nor his siblings would have any right, title or claim in respect of the said properties.

(v) The Defendants have further contended that the Plaintiff has suppressed the existence of the 2001 Affidavit by failing to disclose the same either in the plaint or in the present Interim Application. The said affidavit was produced for the first time along with their affidavit in reply. The Plaintiff does not dispute the execution of the 2001 Affidavit. His case, however, is that he, like his siblings, was required by the late father to execute the affidavit only as a measure for protecting the family properties and upon an express oral assurance that the affidavit would never be acted upon or relied upon against any of them.

(vi) Since considerable reliance has been placed by both sides upon the 2001 Affidavit and its effect has a bearing on the adjudication of the present Interim Application, it would be appropriate to reproduce the relevant extract thereof:

> *"I say that all the properties, movable as well as immovable, belong to our parents, as mentioned above. The said properties are acquired by them from their self-earnings. It is not their ancestral property. Neither myself nor any of my brothers or sister or anyone claiming through us has any right or claim whatsoever in our said parents properties. We shall also have no right or claim in any other property, movable or immovable, that our parents may hereafter acquire."*

(vii) It is the Defendants' case that, sometime in or about the year 2003, the late mother executed nomination forms in respect of certain immovable properties, namely those described at serial nos. 1, 2, 3, 4, 5, 9 and 10 of Exhibit "G", nominating the late father as her nominee. It is further their case that, pursuant thereto, the name of the late father came to be entered in the records of the respective co-operative societies in relation to the said properties.

(viii) It is the Defendants' case that, owing to disputes which had arisen between the late father, on the one hand, and the Plaintiff and his wife, on the other, the late father instituted L.E. Suit No. 1272 of 2010 before the City Civil Court at Bombay seeking their eviction from the

Gulab View Bungalow. It is common ground that the said suit has since been dismissed.

(ix) During the years 2012 and 2013, the late father executed nine registered Gift Deeds in respect of certain immovable suit properties in favour of Defendant Nos. 1, 3 and 4. The validity and effect of these Gift Deeds constitute one of the principal issues in the present Suit.

(x) Although the plaint does not specify the point of time at which the Plaintiff acquired knowledge of the impugned Gift Deeds, Defendant Nos. 1 and 3 to 8 and 10 have relied upon an affidavit filed by the Plaintiff in January 2015 in the aforesaid eviction proceedings (hereinafter referred to as the **"2015 Affidavit"**) to contend that the Plaintiff was, at the very least, aware of the registered Gift Deed dated 12th September 2013 relating to the Gulab View Bungalow since January 2015. The Plaintiff, on the other hand, disputes the legal consequences sought to be drawn from the said affidavit. Since reliance has been placed by both sides on the 2015 Affidavit, the relevant extract thereof is reproduced below:

> *"3. I say Appellant that apart from the fact that the Appellant is not exclusive owner, with assuming for a moment that the Appellant as he claim to be absolute owner is otherwise also no longer Owner nor has any right title in interest in suit premises in that behalf I say that the I have recently on 8th January, 2015 has reliably learnt that Appellant who is my father, illegally in order to defeat my right, title interest in the Bungalow purchased by my mother and another Bungalow which is HUF property being Bungalow Unit bearing No. 14 and 14A executed Transferred deed in favour of third party by Registered Deed Dated 12th September, 2013 and by which Transfer Deed it is alleged that the Appellant having transferred, assured the Bunglow Unit No.14 Grd Floor with Share Certificate No.36 and Bunglow Unit No. 14A,FF i.e 1st Floor with Share Certificate No. 37 together with all his rights,*

credits, advantages whatsoever and in the said premises or any part thereof to the said third party"

(xi) The record further indicates that, by an Advocate's notice dated 15th July 2013, the Plaintiff asserted that the immovable suit properties belonged to the Khanna HUF and called upon the late father to effect partition thereof. The said notice was replied to on 14th August 2013 by the late father and Defendant Nos. 1 to 4, who denied the existence of any HUF and disputed the Plaintiff's alleged entitlement, inter alia, by placing reliance upon the 2001 Affidavit. The Plaintiff, through his Advocate, thereafter addressed a rejoinder dated 27th October 2013 controverting the contents of the said reply. On 15th July 2013, the Plaintiff, through his Advocate, is stated to have issued a notice asserting rights in respect of the immovable suit properties and sought their partition, on the basis that they belonged to the Khanna HUF of which, he was stated to be a member. The said notice was replied to by the late father and Defendant Nos. 1 to 4 vide letter dated 14th August 2013 wherein, they expressly denied the existence of any alleged Khanna HUF. Further, the Plaintiff's claim was also resisted by their reliance on the 2001 Affidavit executed by the Plaintiff. On 27th October 2013, there was a response from the Plaintiff denying the contents of the said reply.

(xii) The Defendants have further relied upon a Public Notice dated 13th September 2013 issued by the late father in various newspapers, whereby he purported to sever all relations with the Plaintiff and declared that the Plaintiff had no right, title or interest in any of his self-acquired movable or immovable properties. Since the said Public

Notice has also been relied upon by both sides, the relevant portion thereof is reproduced below:

> *"General Public is hereby informed that I, Shri Darshan V. Khanna have disconnected all my relations with my younger son named Shri Varrinder Khanna in view of his bad character vagabond lifestyle and absolutely having no love and affection with me.*
>
> *General public is further informed the said my younger son shall absolutely have no right or interest in my self-acquired property, movable or immovable and has absolutely no concern with the same either in the present or shall have in future.*
>
> *Public is hereby informed to take note of the aforesaid position and not to deal with in any kind of transaction relating to my properties, movable and immovable in any manner whatsoever. If inspite of this notice, any person or persons enter into any transaction relating to my self-acquired properties with my said younger son named Shri Varrinder Khanna neither myself nor anyone else shall be held responsible and in any event any such transaction shall be treated as null and void, not valid and not binding on me."*

(xiii) The Defendants further contend that, pursuant to an application made by the late father on or about 24th September 2013, Defendant No. 11 Society transferred the Gulab View Bungalow to the names of Defendant Nos. 1, 3 and 4. In support thereof, reliance is placed upon an email dated 31st October 2013 addressed by the Chairman of Defendant No. 11 Society recording that the transfer had been effected.

(xiv) It is not in dispute that the leased shops described at serial nos. 2 to 4 of Exhibit "G" are presently in the occupation of Defendant No. 13 under a Lease Deed dated 10th February 2015 executed by Defendant Nos. 1, 3 and 4.

(xv) On 21st May 2022, the Plaintiff addressed a communication to Defendant No. 11 Society seeking inspection of and copies of documents relating to the Gulab View Bungalow. According to the Plaintiff, the Society declined the request on the ground that he was neither a member of the Society nor otherwise entitled to seek such documents.

(xvi) The Plaintiff thereafter approached the Deputy Registrar, Co-operative Societies, M-Ward. According to the Plaintiff, during the course of those proceedings, Defendant No. 11 Society produced its Share Register on or about 20th December 2022, whereupon he, for the first time, became aware that two fresh share certificates dated 27th May 2009 had been issued in respect of the Gulab View Bungalow exclusively in the name of the late father. The Plaintiff asserts that, prior thereto, the original share certificates reflected his name and that of Defendant No. 3.

(xvii) The Plaintiff contends that the issuance of the aforesaid share certificates exclusively in favour of the late father was illegal and was effected during the tenure of Defendant No. 1 as Honorary Secretary of Defendant No. 11 Society, without any notice to him or any valid resolution removing him from membership. It is his further case that the subsequent Gift Deed executed by the late father in respect of the Gulab View Bungalow in favour of Defendant Nos. 1, 3 and 4 is consequently vitiated. The Defendants dispute these allegations.

(xviii) It is common ground that the Plaintiff and his wife are presently residing on the first floor of the Gulab View Bungalow. Defendant No. 3 has instituted L.E. Suit No. 71 of 2022 before the Court of

Small Causes at Bombay seeking their eviction therefrom, which proceedings are stated to be pending.

(xix) The garages described at serial nos. 7 to 10 of Exhibit "G", situated in Defendant No. 14 Society, also formed the subject matter of Commercial Arbitration Petition No. 20 of 2022 before this Court. Pursuant to Consent Terms dated 16th March 2022, Defendant No. 3 agreed to hand over vacant possession of the said garages in consideration of being allotted one 2-BHK residential flat admeasuring approximately 650 sq. ft., together with one car parking space, in the redeveloped building without additional consideration.

(xx) According to the Plaintiff, it was only after the demise of the late father that he became fully aware of the nature and effect of the transactions impugned in the present Suit. The Suit accordingly came to be instituted in September 2022, followed by the filing of the present Interim Application in October 2022. The plaint asserts that the Plaintiff came to know and understand the full effect of the illegal acts that are highlighted in the impugned transfers, only after the demise of his late father and as a result, the above suit was instituted in September 2022. The present Interim Application came to be filed shortly thereafter, in October 2022.

8. I have heard Mr. Ghanshyam Mishra, learned Counsel who appears for the Applicant and Mr. Nirman Sharma, learned Counsel who appears for the contesting Defendant Nos. 1, 3 to 8 and 10.

SUBMISSIONS OF THE APPLICANT

9. Mr. Mishra submits that the immovable suit properties were either independently acquired by the late father and/or the late Shashikala and/or jointly, by both of them. In so far as the properties which stood in the name of the late mother, he submits that the name of the late father was added in the documents and records of the Societies only pursuant to the nomination that stood in his favour and as a result, the late father merely acted as the trustee or the caretaker of such properties of the late mother and could not have executed the nine registered gift deeds, transferring the said properties in favour of Defendant Nos. 1, 3 and 4. In support, he relies on the decision of the Supreme Court in ***Indrani Wahi vs. Registrar of Co-operative Societies***[1] *and* the decision of this Court in ***Karan Vishnu Khandelwal vs. Chairman/Secretary (Andheri), Vaikunth Cooperative Housing Society Ltd and Ors***[2]***.***

10. He therefore submits that the nine registered gift deeds executed during the period 2012 – 2013 are *void ab initio* and fraudulent and, as a result, incapable of conferring any lawful title upon the donees, namely, Defendant Nos. 1, 3 and 4. He submits that a void deed confers no rights, and neither registration nor possession can validate it, and therefore, he submits that his challenge to these nine registered gift deeds is not barred by limitation. He also submits that the recitals in the gift deeds are false and incorrect. He relies on the decision of the Supreme Court in ***Shivakumar v. Sharanabasappa***[3] in this regard.

[1] (2016) 6 SCC 440
[2] 2022 SCC OnLine Bom 11785
[3] 2020 SCC OnLine SC 385

11. Even otherwise, Mr. Mishra submits that upon the demise of the late father on 15th January 2022, when the Plaintiff sought partition, it was only then that he learnt about these nine registered gift deeds. This, he states, was only sometime in or around May 2022 and hence, the suit is within limitation. He argues that despite executing these gift deeds, the late father suppressed them, not only from the Plaintiff, but also from the Court where he had filed proceedings against the Plaintiff seeking his eviction from the Gulab View Bungalow.

12. Notwithstanding the above, he submits that the present Suit challenges the illegal and unlawful alienations made by the late father and seeks enforcement of the Plaintiff's share in the joint family properties. Accordingly, Mr. Mishra relies upon Articles 109 and 110 of the Limitation Act, 1963, which provide a 12-year period for an aggrieved person to institute an action challenging such alienations. On this ground also, he submits that the suit is within limitation. In support, he relies upon the judgment of the Supreme Court in ***K.C. Laxmana vs. K.C. Chandrappa Gowda & Ors***[4]**.**

13. In support of his submission that the suit properties being the joint family properties of the Khanna HUF, Mr. Mishra submits that the family was joint in food, worship and estate and therefore all the properties acquired in the name of the Karta, namely, the late father, during subsistence of the HUF are presumed to be HUF property, in the absence of cogent proof to the contrary. He adds that the Defendants have not been able to establish any independent source of income of the late father from which the immovable suit properties could have been acquired during the period 1974 – 2011. As a result, he submits that the immovable suit properties are joint family properties of the

4 2022 SCC Online SC 471

HUF. In support, he relies on the decision of the Supreme Court in ***Adiveppa & Ors v. Bhimappa & Anr***[5]***.***

14. Mr. Mishra further submits that the late mother was a businesswoman and proprietrix of various entities and accordingly, had her own independent source of income from which some of the immovable suit properties which stood in her name were originally acquired by her. Notwithstanding this, he relies upon Section 14 of the Hindu Succession Act, 1956 to submit that any property possessed by a female Hindu, whether acquired before or after the commencement of the said Act, is held by her as the full owner and not a limited one. Accordingly, he argues that the properties which stood in the name of the late mother cannot be said to be owned by the late father and cannot be dealt with by him, as has been done in the present case.

15. Mr. Mishra further submits that though the 2001 Affidavit was executed by his client, it was done at the instance of the late father and on the express oral assurance that the same would never be used and/or relied upon against the Plaintiff. He explains that besides the Plaintiff, the late father had also made his other children execute a similar affidavit which was intended only as a protective measure to safeguard the family assets. He submits that the late father had always assured the Plaintiff that the suit properties would be equitably distributed between his children. He adds that the fact that he continued to reside with the late father during his lifetime further corroborates this position. Without prejudice, he argues that the 2001 Affidavit is admittedly unregistered and therefore cannot operate as a relinquishment of the Plaintiff’s rights in the immovable suit properties.

5 (2017) 9 SCC 586

16. On the 2015 Affidavit, the Plaintiff contends that the same is admittedly unaffirmed. In any event, he denies that the same reveals his knowledge of the execution of the registered gift deed transferring the Gulab View Bungalow in favour of Defendant Nos. 1, 3 and 4. On the contrary, he submits that the 2015 Affidavit refers to the registered gift deed being executed in favour of a third party. In any event, he adds that the late father had verbally assured him that no such transfer had been done. Moreover, when the Plaintiff sought details of such transfer from Defendant No. 11 Society, no details were forthcoming. Hence, Mr. Mishra argues that no reliance can be placed on this 2015 Affidavit to impute knowledge of his client about the execution of the registered gift deeds. He submits that if he had such knowledge, there was no reason for him to wait till 2022 to file the suit.

17. He therefore submits that the Plaintiff is entitled to the interim protection sought in the present Interim Application.

SUBMISSIONS OF DEFENDANT NOS. 2 AND 9

18. Ms. Preeti Madan, learned counsel appearing on behalf of Defendant Nos. 2 and 9, supports the submissions made by Mr. Mishra, on behalf of the Plaintiff. She submits that like the Plaintiff, her clients also have been deprived of their lawful rights in the HUF properties. In addition to the judgments cited by the Plaintiff, she relied upon ***Sarbati Devi v. Usha Devi***[6], and ***Shyam Tikamdas Dembla v. Madan Dembla***[7].

6 (1984) 1 SCC 424

7 Judgment dated 11th June 2025 passed in Testamentary Suit No. 82 of 2008 in Testamentary Petition No. 548 of 2008 with Suit No. 2286 of 2008.

SUBMISSIONS OF DEFENDANT NOS. 1, 3 TO 8 AND 10

19. *Per contra*, Mr. Nirman Sharma, learned counsel appearing on behalf of Defendant Nos. 1, 3 to 8 and 10 (hereinafter, referred to as the **"said Defendants"**), vehemently opposes the reliefs sought in the present Interim Application. At the outset, it is contended that the Plaintiff has approached this Court by suppressing material facts. It is further submitted that the plaint contains false averments that the Plaintiff acquired knowledge of the impugned transfers only in 2022, whereas the material placed on record by the said Defendants reveals that the Plaintiff had knowledge of the same much prior thereto.

20. Mr. Sharma invites our attention to the contents of the 2015 Affidavit and in particular, paragraph 3 thereof which clearly exposes the falsity of the Plaintiff's case and reveals his knowledge of the registered gift deed in respect of the Gulab View Bungalow. He submits that the Plaintiff has dishonestly suppressed these documents and not approached this Court with clean hands, which disentitles him to the discretionary reliefs sought in the present Interim Application.

21. In addition, Mr. Sharma also relies upon the 2001 Affidavit, which also has been suppressed by the Plaintiff. By relying on its contents, he submits that the Plaintiff has unequivocally confirmed, on oath, that he has no share in the suit properties. Accordingly, he submits that the suit is not maintainable. Moreover, he argues that the averments in the plaint are also *ex-facie* contrary to the averments contained in the 2001 Affidavit insofar as his case regarding Khanna HUF and joint family properties is concerned and on this ground also, the Plaintiff is disentitled to any reliefs.

22. Moreover, Mr. Sharma also relies on the Public Notice issued by the late father in September 2013 in various newspapers, in which the late father has categorically distanced and severed ties with the Plaintiff whilst further declaring that the latter had no right or interest in the self-acquired movable and immovable properties of the late father. He submits that this Public Notice has also been suppressed by the Plaintiff. Accordingly, by relying on the above three relevant and material documents which, he asserts, have been deliberately suppressed from this Court, Mr. Sharma submits that the Plaintiff is disentitled from equitable and discretionary reliefs. In support, he relies on the seminal judgment of the Supreme Court in ***S.P. Chengalvaraya Naidu v. Jagannath***[8].

23. Additionally, he submits that the reliefs are hopelessly barred by limitation. In support, he relies on the 2001 Affidavit, from which date, it is asserted that the Plaintiff is put to notice of him not being entitled to any share in the suit properties. Notwithstanding this, he relies on the eviction proceedings filed by the late father against the Plaintiff in June 2010 concerning the Gulab View Bungalow and submits that, if not from 2001, at least from 2010, the Plaintiff was put to notice that his alleged share in the Gulab View Bungalow, whether on the basis of being a member of the Khanna HUF or otherwise, was expressly disputed by the late father. Accordingly, even if the prescribed period of 12 years under Article 110 of the Schedule to the Limitation Act, 1963 is considered, the present Suit, which is filed in September 2022, is barred by limitation.

24. Mr. Sharma further submits that the suit also challenges the registered gift deeds, nine of which were admittedly executed during the period 2012 –

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8 1993 SCC OnLine SC 318

2013. By relying upon Article 58 of the Schedule to the Limitation Act, 1963, he submits that the suit is also hopelessly time-barred.

25. On merits, Mr. Sharma submits that the case of the Plaintiff is also far from convincing inasmuch as, on the one hand the Plaintiff seeks a share in the suit properties on the ground that the same are joint family properties of the Khanna HUF whilst on the other, the plaint expressly recognises that at least some of the suit properties are the individual and self-acquired properties of the late mother, the late father and also some of them are jointly acquired by both of them. Mr. Sharma is at pains to point out that there is absolutely no clarity in this regard and the plaint is conspicuously silent as to which suit property falls under which category.

26. Moreover, without prejudice to his clients' express assertion denying the existence of any Khanna HUF, Mr. Sharma submits that the pleadings neither contain the necessary averments nor annex the relevant documents from which it can be ascertained that any of the suit properties belong to such Khanna HUF. In fact, he asserts that the plaint fails to make out and/or establish even the existence of any such Khanna HUF, let alone proving the existence of a common family nucleus, or the use of joint family funds for acquisition of the suit properties. He is at pains to point out that only after the Plaintiff discharges such initial burden would it then shift on his clients to prove the contrary. In the present case, he submits that since this has not been done, the said Defendants are not required to prove otherwise. Reliance is placed on the decision of the Supreme Court in ***Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade***[9] and this Court's decision in ***Leena Chaban Tonde v. Dilip Yashwant Padale***[10].

[9] (2007) 1 SCC 521

[10] Order dated 14th October 2022 passed in Appeal From Order No. 161 of 2021

27. Insofar as the suit properties which the Plaintiff asserts to be the individual and self-acquired properties of the late mother are concerned, Mr. Sharma submits that no title or other document corroborating such fact has been produced by the Plaintiff.

28. He therefore submits that the Plaintiff has failed to make out even a prima facie case which entitles him to any interim reliefs. On the contrary, he submits that not only is the Plaintiff guilty of gross and deliberate suppression but the reliefs sought by him are barred by limitation. On all these grounds, he opposes the grant of interim reliefs sought in the present Interim Application.

REASONS, ANALYSIS AND FINDINGS

29. I have heard the parties at considerable length. I have also perused the pleadings, the documents annexed thereto, the affidavits filed in support of and in opposition to the present Interim Application. The reliefs sought by the Plaintiff are discretionary and equitable in nature. It is therefore incumbent upon the Plaintiff to satisfy the well-settled requirements governing the grant of interlocutory relief, namely, the existence of a prima facie case, balance of convenience in his favour and the likelihood of irreparable injury if interim protection is refused.

Suppression:

30. The first and foremost objection of the said Defendants concerns the maintainability of the present Interim Application. It is contended that the Plaintiff has approached this Court after suppressing material facts and documents having a direct bearing on the reliefs sought and the very foundation of the present Suit, thereby disentitling himself to equitable and discretionary relief. Having considered the rival submissions and the material on record, I find considerable substance in this objection.

31. A party invoking the equitable jurisdiction of the Court is under a duty to make full and frank disclosure of all material facts, including those adverse to its case. Suppression or selective disclosure strikes at the root of the Court's equitable jurisdiction. A material fact is one capable of influencing the Court in deciding whether to exercise its discretion. The question is not whether the suppressed document conclusively defeats the Plaintiff's case, but whether it is relevant to the controversy. If it is, its non-disclosure is material irrespective of any subsequent explanation.

32. The first such document is the Plaintiff's affidavit dated 8th July 2001, the execution of which is admitted. By it, the Plaintiff unequivocally declared that his parents' movable and immovable properties were their self-acquired properties, were not ancestral, and that neither he nor his siblings would claim any right therein, whether in respect of existing or future acquisitions. Prima facie, these declarations are fundamentally inconsistent with the Plaintiff's present case that all the suit properties belong to the alleged Khanna HUF in which he has a coparcenary interest.

33. At this interlocutory stage, I am not required to record a finding on whether the 2001 Affidavit operates as an estoppel, constitutes a valid relinquishment, was executed under coercion, or pursuant to an oral family arrangement. These are matters for trial. On the contrary, the material fact is that the Plaintiff admittedly executed a document fundamentally inconsistent with his present pleadings, making its existence a material fact requiring disclosure in the plaint. Instead, the plaint is completely silent, and the 2001 Affidavit surfaced only after its production by the said Defendants. The Plaintiff's explanation that the 2001 Affidavit was executed only as a protective measure upon an assurance that it would never be acted upon does not justify its non-disclosure. If that was his case, he ought to have candidly disclosed the document and simultaneously pleaded the surrounding circumstances. Suppression followed by explanation after disclosure by the opposite party does not satisfy the duty of full and frank disclosure.

34. Equally significant is the 2013 correspondence. By Advocate's notice dated 15th July 2013, the Plaintiff asserted rights in the suit properties on the footing that they belonged to the Khanna HUF. This was expressly denied by the late father and Defendant Nos. 1 to 4 in their reply dated 14th August 2013, wherein they asserted that the properties were self-acquired and specifically relied upon the 2001 Affidavit. The Plaintiff admittedly sent a rejoinder dated 27th October 2013 disputing that stand.

35. These documents are significant because they prima facie establish that by August 2013 the Plaintiff had express notice that the existence of the alleged HUF and his claimed coparcenary rights were denied, that the Defendants had relied upon the 2001 Affidavit long before the present Suit, and that the correspondence bears directly on the Plaintiff's pleas of limitation and knowledge. Despite their obvious relevance, the plaint contains no fair disclosure of these developments, particularly the categorical denial of the Plaintiff's rights and the reliance placed upon the 2001 Affidavit.

36. The said Defendants have also relied upon the Public Notice dated 13th September 2013 issued by the late father declaring that he had severed relations with the Plaintiff and that the Plaintiff had no right or interest in any of his self-acquired properties. While the ultimate legal efficacy of the notice need not be examined at this stage, its existence is undoubtedly material as it forms part of the chain of events relied upon by the Defendants to demonstrate that the Plaintiff was aware, long before the Suit, that his alleged rights were being expressly disputed. The plaint is conspicuously silent regarding this Public Notice and no satisfactory explanation for its omission has been offered.

37. Reliance is also placed upon the Plaintiff's affidavit filed in January 2015 in eviction proceedings initiated by the late father, wherein the Plaintiff stated that he had learnt of a registered transfer deed dated 12th September 2013 concerning the Gulab View Bungalow. The Plaintiff contends that the affidavit was unaffirmed, referred to a transfer in favour of a third party and that the late father later assured him that no such transfer had taken place. These are matters for trial. However, the affidavit prima facie indicates that by January 2015 the Plaintiff asserted knowledge of a registered transfer concerning the very property now in dispute. Whether such knowledge attracts the law of limitation will be considered separately, but the document plainly bears upon the Plaintiff's plea that he became aware of the impugned transactions only after his father's demise.

38. Viewed cumulatively, the 2001 Affidavit, the 2013 exchange of notices, the Public Notice dated 13th September 2013 and the 2015 Affidavit cannot be regarded as inconsequential. Each bears directly upon the Plaintiff's case regarding the existence of the alleged Khanna HUF, his claimed rights, his knowledge of the impugned transactions and the issue of limitation. Whether the Plaintiff ultimately succeeds in explaining these documents is a matter for trial. However, their existence ought to have been candidly disclosed when seeking equitable relief. The subsequent explanations offered in the rejoinder and during arguments cannot cure the initial omission, particularly when the documents came on record only through the Defendants. Prima facie, therefore, I am of the view that the Plaintiff has not approached the Court with the degree of candour expected of a litigant seeking equitable relief. The suppression assumes added significance as it materially affects the issues of limitation, acquiescence, delay and the very existence of the rights now asserted.

39. However, at this interlocutory stage, it is unnecessary to determine whether the suppression was deliberate. It is sufficient to hold that the omission to disclose these material documents, each bearing directly upon the Plaintiff's pleaded case, weighs against the grant of equitable and discretionary interim relief. Their final evidentiary value shall be determined at trial.

40. In the seminal judgment of ***S.P. Chengalvaraya Naidu*** (supra), the Supreme Court held that a litigant who suppresses material facts or documents is not entitled to invoke the Court's equitable jurisdiction. The principle applies equally while considering interlocutory relief. The ratio squarely governs the present case. I am, therefore, prima facie satisfied that the Plaintiff's withholding of material documents having a direct bearing on the controversy is a relevant circumstance militating against the grant of interim equitable relief.

Limitation:

41. The second principal objection urged by the said Defendants is that the present Suit is barred by limitation. According to them, both the challenge to the impugned Gift Deeds and the Plaintiff's assertion of rights in the suit properties are hopelessly time-barred. The Plaintiff, however, contends that the present Suit is within limitation as he acquired knowledge of the impugned transactions only after the demise of the late father in 2022 or, alternatively, because Articles 109 and 110 of the Schedule to the Limitation Act, 1963 prescribe a period of twelve years.

42. The issue of limitation cannot be considered in isolation, as it is intrinsically linked to the Plaintiff's pleaded case regarding when he acquired knowledge of the impugned transactions and when his alleged rights were first denied.

43. The Plaintiff pleads that although the impugned Gift Deeds were executed in 2012 and 2013, he became aware of their true nature only after the late father's demise in January 2022 upon obtaining documents from the concerned Co-operative Society during proceedings before the Deputy Registrar. He further alleges that the late father had concealed the transactions and orally assured him that no transfers had taken place. Prima facie, this explanation is not free from difficulty, as the contemporaneous record raises substantial doubt regarding the Plaintiff's claim that he remained unaware of the impugned transactions until 2022.

44. Firstly, the Plaintiff admittedly executed the 2001 Affidavit acknowledging that his parents' properties were self-acquired and that neither he nor his siblings would claim any right therein. The question of whether the 2001 Affidavit ultimately binds him is a matter for trial. Nevertheless, it prima facie indicates that, as early as 2001, the Plaintiff was aware that the late father treated the properties as his exclusive properties.

45. Secondly, the eviction proceedings instituted by the late father in 2010 in respect of the Gulab View Bungalow are a relevant circumstance, as they prima facie indicate that the Plaintiff's alleged rights were not recognised by the late father. The question of whether they amount to a clear and unequivocal denial of the Plaintiff's present claim requires evidence and can only be determined at trial.

46. Thirdly, the 2013 correspondence assumes considerable significance. By Advocate's notice dated 15th July 2013, the Plaintiff asserted that the suit properties belonged to the alleged Khanna HUF and sought partition. The reply dated 14th August 2013 issued on behalf of the late father and Defendant Nos. 1 to 4 categorically denied the existence of any HUF, asserted exclusive ownership and relied upon the 2001 Affidavit. The Plaintiff admittedly issued a rejoinder. Prima facie, therefore, by August 2013 the Plaintiff had express notice that his alleged rights were being unequivocally disputed. The question of whether this constituted accrual of the cause of action for limitation is a matter for trial, but the correspondence undoubtedly bears directly on the issue.

47. Fourthly, in his affidavit filed in January 2015 in the eviction proceedings, the Plaintiff referred to having learnt of a registered transfer deed dated 12th September 2013 concerning the Gulab View Bungalow. Mr. Mishra submitted that the affidavit referred to a transfer in favour of a third party and remained unaffirmed. Those submissions require trial. Nevertheless, the affidavit prima facie raises a substantial issue regarding the Plaintiff's knowledge of the impugned transactions well before the institution of the present Suit.

48. Despite this sequence of events, the Plaintiff did not institute proceedings challenging the Gift Deeds until September 2022. Even assuming that knowledge was acquired in 2015, no satisfactory explanation has been offered for the delay of over seven years. Likewise, if the Plaintiff's rights stood expressly denied in 2013, the plaint is silent as to why appropriate proceedings were not instituted thereafter. The Plaintiff attributes the delay to assurances allegedly given by the late father. The questions of whether such assurances were in fact given, whether they prevented the Plaintiff from asserting his rights, or whether they could extend limitation are matters requiring evidence. At this interlocutory stage, such oral assertions cannot, by themselves, displace the contemporaneous documentary record relied upon by the Defendants.

49. Mr. Mishra submitted that the Suit is essentially one for partition of HUF properties and is therefore governed by Articles 109 and 110 of the Limitation Act, 1963, which prescribe a period of twelve years. At this stage, that submission cannot be accepted without first determining whether the Plaintiff has prima facie established the existence of the alleged HUF and the HUF character of the suit properties. Unless those foundational facts are established, the applicability of Articles 109 and 110 cannot be conclusively determined.

50. The Defendants, on the other hand, contend that the principal challenge is to registered Gift Deeds executed in 2012 and 2013 and is therefore governed by Article 58. The question of whether the Suit is governed by Article 58 alone or wholly or partly by Articles 109 and 110 raises substantial questions of law intertwined with disputed facts which cannot be conclusively decided on affidavits.

51. Reliance was also placed upon ***K.C. Laxmana*** (supra) in support of the applicability of Articles 109 and 110. However, whether those Articles govern the present Suit depends upon the antecedent determination of the Plaintiff's status as a coparcener and the character of the suit properties, both of which are seriously disputed. Further, the Defendants have raised substantial questions regarding the Plaintiff's knowledge of the impugned transactions, the 2013 correspondence, the 2015 Affidavit and the applicability of Article 58. The issue of limitation is therefore far from free from doubt, and the decision relied upon by the Plaintiff cannot conclusively determine the issue at the interlocutory stage.

52. I am, therefore, prima facie of the view that the defence of limitation is neither illusory nor frivolous. I refrain from deciding whether the present Suit is in fact barred by limitation. It is sufficient to note that the defence is supported by contemporaneous documents which cannot be brushed aside at this stage and require adjudication at trial. The existence of such a substantial defence renders it unsafe to grant interlocutory orders unsettling transactions that have remained undisturbed for several years. In the facts of the present case, limitation is not merely incidental but goes to the root of the Plaintiff's entitlement to the reliefs claimed.

53. Accordingly, while all questions relating to limitation are kept open for determination at trial, the existence of a substantial and arguable plea of limitation, coupled with the unexplained delay emerging from the contemporaneous record, constitutes a further circumstance militating against the grant of discretionary interlocutory relief. As the issue requires detailed evidence and adjudication, I am unable to hold, at this interlocutory stage, that the Plaintiff has established a clear prima facie enforceable right warranting protection by way of interim injunction.

HUF Properties and the alleged Khanna HUF:

54. The Plaintiff's case rests on the assertion that the suit properties belong to the alleged Khanna HUF, of which the late father was the Karta, and that the Plaintiff, as a coparcener, has an undivided 1/5th share therein. The said Defendants dispute not merely the Plaintiff's entitlement but the very existence of any alleged Khanna HUF. According to them, no HUF or joint family nucleus ever existed and the suit properties are either the self-acquired properties of the late father, properties independently acquired by the late mother, or properties admittedly acquired by Defendant No. 3 in his own name.

55. It is well settled that the existence of a Hindu joint family does not, by itself, establish the existence of joint family property, nor does every property standing in the name of a family member acquire that character. The initial burden lies upon the party asserting such a claim to establish the foundational facts, including the existence of a joint family nucleus or ancestral funds sufficient to acquire the properties, or other circumstances showing that the properties were acquired from or impressed with the character of joint family property. Only thereafter does the evidentiary burden shift. The decisions in ***Appasaheb Peerappa Chamdgade*** (supra) and ***Leena Chaban Tonde*** (supra) reiterate these principles. Examined in that light, the plaint, prima facie, fails to establish even the existence of the alleged Khanna HUF. Apart from broad assertions that the family remained joint in food, worship and estate and that the late father acted as Karta, there are no material pleadings as to when the HUF came into existence, its original corpus, any ancestral property or joint family nucleus, the source from which the suit properties acquired the character of HUF property, or whether such character arose by inheritance, blending, throwing into the common stock or any other recognised mode. These omissions assume significance as the Plaintiff seeks to displace registered title standing in different names over several decades.

56. Mr. Mishra submitted that the late father had no independent source of income sufficient to acquire the suit properties and, therefore, the acquisitions ought to be presumed to have been made from joint family funds. Prima facie, this submission cannot be accepted in the absence of foundational pleadings and supporting material. No contemporaneous financial records, income-tax returns, business records, account books or similar documentary evidence have been produced to establish either the existence or sufficiency of any joint family nucleus. On the contrary, the plaint itself states that some properties were acquired by the late mother, others by the late father, some jointly by both, and others admittedly by Defendant No. 3. These pleadings themselves militate against the sweeping assertion that every property in Exhibit "G" forms part of the alleged Khanna HUF.

57. In view of these admissions, it was incumbent upon the Plaintiff to plead and prima facie establish the legal basis on which each category of property acquired the character of HUF property. The plaint neither identifies when each property allegedly assumed that character nor explains whether it did so by blending, throwing into the common stock, family arrangement or otherwise. Instead, it proceeds on a broad omnibus assertion unsupported by the requisite factual foundation.

58. The Plaintiff's case is further weakened by the 2001 Affidavit admittedly executed by him, wherein he acknowledged that his parents' properties had been acquired from their self-earned income and were not ancestral. Mr. Mishra submitted that the affidavit neither constitutes a relinquishment, being unregistered, nor binds the Plaintiff as it was executed only at the insistence of the late father upon an oral assurance that it would never be relied upon. These submissions require consideration at trial. Nevertheless, irrespective of its ultimate legal effect, the affidavit is contemporaneous evidence which prima facie contradicts the Plaintiff's present assertion that the properties always formed part of the alleged HUF. The question of whether the inconsistency can ultimately be explained is a matter for trial.

59. Reliance was placed on ***Indrani Wahi*** (supra) and ***Karan Vishnu Khandelwal*** (supra) to contend that a nominee merely represents the estate of the deceased and does not acquire beneficial ownership. Similarly reliance was also placed on ***Shyam Tikamdas Dembla*** (supra) and ***Sarbati Devi*** (supra) by Defendant Nos. 2 and 9. The proposition is well settled. Nomination under the Maharashtra Co-operative Societies Act or the relevant bye-laws neither confers title nor overrides the law of succession. However, at this stage, those decisions neither advance the case of the Plaintiff nor Defendant Nos. 2 and 9. The dispute is not confined to the legal effect of nomination. The Defendants dispute the very existence of the alleged HUF, the character of the suit properties and the Plaintiff's proprietary rights. Further, the properties have been dealt with under registered Gift Deeds executed during the lifetime of the late father. In the absence of a prima facie finding regarding the Plaintiff's title, the principles relating to nomination do not justify the grant of interim relief.

60. Mr. Mishra also relied upon ***Adiveppa*** (supra) to submit that once a sufficient joint family nucleus is established, acquisitions made in the name of the Karta are presumed to be joint family properties. The principle is unexceptionable. However, before such a presumption can arise, the Plaintiff must first prima facie establish the existence of a joint family nucleus capable of financing the acquisitions. As already discussed, no such foundational material has been placed before the Court.

61. The Plaintiff further seeks to challenge several registered Gift Deeds executed over different periods in respect of properties standing in different names. Such challenge necessarily presupposes a prima facie finding that each property formed part of the alleged HUF or otherwise vested in an estate in which the Plaintiff had a subsisting proprietary interest. In the absence of such foundational determination, the challenge to the impugned Gift Deeds cannot presently succeed. Their validity must abide the result of the trial.

62. Reliance was next placed on ***Shivakumar*** (supra) for the proposition that a void instrument confers no title and may be ignored without a formal declaration. The principle is equally well settled. However, its application necessarily presupposes a prima facie conclusion that the Gift Deeds were executed without legal authority. That issue is itself seriously disputed. Whether the late father was the absolute owner, whether the properties were HUF properties, whether the Plaintiff possessed any subsisting proprietary interest and whether the Gift Deeds are void or merely voidable are all matters to be determined at trial. Accordingly, the said decision does not presently assist the Plaintiff.

63. Considerable emphasis was placed on the properties standing in the name of the late mother. It was submitted that those properties exclusively belonged to her and that, after her demise, the late father merely held them as nominee or trustee and therefore lacked authority to execute the impugned Gift Deeds. While the legal principles governing the rights of a nominee are well settled, their application presupposes proof of the late mother's exclusive ownership. At present, apart from broad assertions in the plaint, no title documents, conveyances, consideration receipts or other contemporaneous records have been produced to establish that the properties were exclusively acquired by her from her independent earnings. These questions necessarily require evidence.

64. Mr. Mishra also relied upon Section 14 of the Hindu Succession Act to contend that the late mother held the properties standing in her name as their absolute owner. There is no dispute as to the effect of Section 14. However, before it can be invoked, the Plaintiff must first establish, at least prima facie, that the concerned properties were in fact acquired and exclusively owned by the late mother. That foundational issue remains seriously disputed and is presently unsupported by sufficient documentary material.

65. I am conscious that these deficiencies may ultimately be cured after the parties lead oral and documentary evidence. It would, therefore, be inappropriate to record any final finding on the existence of the alleged Khanna HUF. However, for the limited purpose of interlocutory relief, I am unable to hold that the Plaintiff has established a prima facie case that any of the suit properties are HUF properties. The Plaintiff's claim rests upon disputed and presently unsubstantiated foundational facts requiring a full-fledged trial. In the absence of such prima facie proof, this Court cannot, on the basis of broad assertions alone, restrain the Defendants from dealing with properties standing in their names or unsettle transactions effected under registered instruments many years ago.

Inconsistencies:

66. Independent of the issues of suppression, limitation and the existence of the alleged HUF, the pleadings, as framed, suffer from material inconsistencies that go to the root of the Plaintiff's entitlement to interlocutory relief. A plaint must disclose a clear, consistent and legally sustainable cause of action, and the reliefs sought must be supported by the material pleadings.

67. The Suit is founded on the assertion that all the suit properties belong to the alleged Khanna HUF and that the Plaintiff, as a coparcener, is entitled to an undivided 1/5th share. However, the plaint simultaneously pleads that some properties were independently acquired by the late mother, some by the late father, some jointly by both, and two stand in the name of Defendant No.3. Despite these averments, all the properties are collectively described as HUF properties without pleading the factual or legal basis for each property. The plaint does not specify which properties are ancestral, acquired from HUF funds, blended with the HUF estate, when such blending occurred, or the facts supporting such inference. In the absence of these particulars, the Court cannot discern a consistent factual foundation for treating every property in Exhibit "G" as HUF property.

68. The pleadings are further inconsistent in challenging the Gift Deeds. While the principal case is that the properties are HUF properties, the Plaintiff also pleads that several properties exclusively belonged to the late mother and, upon her demise, the late father merely held them as nominee or trustee without authority to execute the Gift Deeds. These are distinct legal foundations requiring separate pleadings and proof. At present, they are interwoven without identifying which basis applies to which property, leaving overlapping and inconsistent claims requiring separate factual enquiry.

69. A similar inconsistency arises in the challenge to the impugned Gift Deeds. The Plaintiff seeks to declare all the impugned Gift Deeds void on the ground that the late father lacked authority to execute them. However, that issue necessarily depends upon first determining whether each property was the exclusive property of the late father, the absolute property of the late mother, inherited property or HUF property. The plaint seeks to invalidate all the impugned Gift Deeds collectively without laying the necessary property-wise factual foundation.

70. The Plaintiff also seeks declarations that the Will dated 25th April 2011, the Codicil dated 22nd October 2020 and the late mother's Will dated 14th November 1998 are illegal, forged, fabricated, sham and not binding. These allegations are pleaded in broad terms without particulars identifying the circumstances of the alleged forgery or fabrication. The question of whether they satisfy the statutory requirements relating to fraud and forgery is a matter for trial. Their present form nevertheless reinforces that these issues require detailed evidence before any prima facie conclusion can be reached.

71. Though pleadings are not to be construed with undue technicality at the interlocutory stage, where the Court is asked to restrain dealings with several immovable properties standing in different names and to interfere with registered transactions executed over different periods, the Plaintiff must present a clear and coherent factual case. That standard is not met. The plaint simultaneously relies upon coparcenary rights, succession, nominee rights, trusteeship, and the invalidity of the registered Gift Deeds and testamentary instruments without correlating each relief to its factual foundation. Mr. Mishra submitted that these are merely alternative pleas. I am unable to accept the submission in its entirety. The difficulty lies not in alternative legal submissions but in the absence of clear factual pleadings identifying which factual foundation governs each property and each relief. Without such particulars, the Plaintiff's claim for interim protection cannot be examined on a property-wise basis.

72. The pleadings, contemporaneous documents and rival submissions reveal disputes not only on questions of law but also on fundamental questions of fact relating to title, source of acquisition, the existence of HUF property, knowledge of the impugned transactions, limitation and the effect of the contemporaneous documents. These issues require oral and documentary evidence, including cross-examination where necessary. Any conclusive finding at the interlocutory stage would risk prejudging matters reserved for trial. I am, therefore, prima facie of the view that the Plaintiff has failed to establish a clear, consistent and legally sustainable factual foundation for interlocutory relief. These deficiencies are substantive, go to the root of the Plaintiff's asserted proprietary rights, directly affect the challenge to the registered Gift Deeds and testamentary instruments, and constitute an additional reason for holding that no prima facie case for equitable interim relief has been made out.

Prima facie case:

73. Having considered the pleadings, the contemporaneous documents and the rival submissions, I am unable to hold that the Plaintiff has established a prima facie case warranting interlocutory protection.

(a) Firstly, the Plaintiff has failed to disclose material documents having a direct bearing on the reliefs sought, including the affidavit of 2001 admittedly executed by him, the correspondence exchanged in 2013, the Public Notice issued by the late father, and the affidavit relied upon by the Defendants evidencing the Plaintiff's knowledge of the impugned transactions.

(b) Secondly, the plea of limitation cannot be said to be illusory or devoid of substance. The material presently on record raises serious and arguable questions regarding the accrual of the cause of action, the Plaintiff's knowledge of the impugned transactions and the applicability of the Limitation Act. These issues require adjudication upon evidence and cannot, at this stage, be answered in the Plaintiff's favour.

(c) Thirdly, the Plaintiff has failed, prima facie, to establish the foundational case that the alleged Khanna HUF existed or that the suit properties possessed the character of HUF properties. Neither the pleadings nor the material on record disclose the existence of a joint family nucleus or explain how each property acquired the character of HUF property.

(d) Lastly, the pleadings disclose material inconsistencies regarding the source and character of the suit properties. The Plaintiff simultaneously asserts rights founded on coparcenary, succession to the estate of the late mother, nominee principles and the invalidity of testamentary and inter vivos dispositions, without clearly correlating each claim to the factual foundation applicable to the respective properties.

(e) The cumulative effect of these circumstances is that the Plaintiff has failed to establish a prima facie case of such strength as would justify an order restraining dealings with several immovable properties or disturbing rights created under registered instruments.

Balance of convenience:

74. In my view, the balance of convenience also does not favour the Plaintiff. The impugned Gift Deeds were executed during 2012 and 2013, whereas the present Suit came to be instituted only in 2022. During this intervening period, the transferees have continued to deal with the properties as owners, and several third-party rights have admittedly come into existence. The record indicates that the leased shops forming part of the suit properties have remained under a registered lease in favour of Defendant No.13 since 2015. Certain properties situated in Defendant No.14 Society have become the subject matter of redevelopment, pursuant to which rights have accrued not only in favour of the developer but also under Consent Terms recorded before this Court in separate proceedings. The transfers have also been recognised by the concerned Co-operative Societies and have remained undisturbed for several years.

75. Granting an injunction at this stage would therefore not merely preserve the existing state of affairs but would unsettle transactions and legal relationships that have subsisted for a considerable period and involve persons against whom no allegation of fraud has been made. Equally significant is the Plaintiff's own conduct. As discussed while dealing with limitation, there is no satisfactory explanation for the Plaintiff having waited until 2022 to institute the present proceedings despite the contemporaneous material relied upon by the Defendants. Whether such delay ultimately defeats the Suit is a matter for trial. Nevertheless, unexplained delay assumes considerable significance while considering equitable and discretionary relief. Equity aids the vigilant and not those who sleep over their rights. No exceptional circumstances have been demonstrated warranting interference with long-standing transactions at the interlocutory stage.

Irreparable injury:

76. The Plaintiff has also failed to establish that refusal of interim relief would result in irreparable injury. The principal reliefs in the Suit are declarations of rights, partition and consequential reliefs. If the Plaintiff ultimately succeeds in establishing the existence of the alleged HUF, the HUF character of the suit properties and the invalidity of the impugned Gift Deeds or testamentary instruments, the Trial Court would be competent to mould the relief and grant appropriate consequential reliefs in accordance with law. Conversely, the grant of an injunction at this stage is likely to cause substantial prejudice to the Defendants and to third parties. Several properties are already the subject matter of completed transfers, subsisting leases and redevelopment arrangements. Interdicting further dealings would adversely affect not only the contesting Defendants but also persons who have acquired independent rights over time. In the facts of the present case, the prejudice likely to be caused by granting an injunction outweighs any prejudice that may be occasioned to the Plaintiff by its refusal.

Conclusion:

77. For all the aforesaid reasons, I am of the view that the Plaintiff has failed to satisfy the three settled requirements governing the grant of interlocutory relief. The Plaintiff has failed to establish a prima facie case; the balance of convenience does not lie in his favour; and no case of irreparable injury has been made out. The grant of an interim injunction being an equitable and discretionary relief, no case is made out for the exercise of such discretion in favour of the Plaintiff.

78. It is clarified that the observations recorded herein are confined solely to the adjudication of the present Interim Application. I have consciously refrained from expressing any final opinion on the maintainability of the Suit, the issue of limitation, the existence of the alleged Khanna HUF, the nature and character of the suit properties, the validity of the impugned Gift Deeds, the testamentary instruments, or any other disputed question of fact or law. All such issues are expressly kept open for determination at the trial upon appreciation of the evidence that may be adduced by the parties.

79. In view of the foregoing discussion, the present Interim Application is dismissed. There shall be no order as to costs.

80. It is clarified that this order shall neither affect nor prejudice the rights and contentions of the parties in L.E. Suit No.71 of 2022 pending before the competent Court, or in any other proceedings concerning the possession, occupation or redevelopment of any of the suit properties. Those proceedings shall be decided independently, on their own merits and in accordance with law, uninfluenced by any prima facie observations contained in the present order.

(FARHAN P. DUBASH, J.)

Shubham Gadhavepatil