SHAGUFTA QUTBUDDIN PATHAN
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.476 OF 2026
WITH
INTERIM APPLICATION NO.3727 OF 2026
IN
APPEAL FROM ORDER NO.476 OF 2026

1. Mrs. Surinder Kaur J. Chhabara
   Age: 58 years, Occ: Business
   Residing at: 103, Rose Building.
   Flower Valley, Wanawadi,
   Pune 4110401

2 Mr. Yashwant Baburao Sawant
Age: 59 years, Occ: Business
R/at: Sawant Villa, Bhoir Colony,
Chinchwad, Pune, 411033 …Appellants/ Orig. Plaintiffs

Versus

1. Late. Merwan Feroze Cama
   Represented through his Legal Heirs:-

a. Smt. Laxmi Merwan Cama
   Age: 67 years, Occ: Agri. & Household
b. Mr. Soli Merwan Cama
   Age: 48 years, Occ: Agriculture
c. Mrs. Rattan Merwan Cama
   Age: 50 years, Occ: Agri. & Household
   Nos. (a) to (c) residing at:-407,
   New Market Plaza, Clover Village, 66-67
   Wanawadi, Pune 411040
   Also through his alleged Legal
   Representative
d. CA Arun Mehta
   Age: 62 years, Occ:- Professional Residing at:-
   A-505, Bharat Sky Vistas,
   DN Nagar, Andheri (West), Mumbai-400053

2. M/s. Ganesh Construction Company
A partnership firm formed under provisions of the Indian Partnership Act, 1932 and having itsoffice at:-
Mittal Towers, 16th Floor, 210, Nariman Point, Mumbai-400 020
Represented through its Partners:-

a) Mrs Umadevi Omprakash Mittal
Age:70 years Occupation: Business
b) Mr. Kishan Maliram Mittal
Age:73 years, Occupation: Business
c) Mr. Arun Maliram Mittal
Age:66 years Occupation: Business
d) Mr. Badal Maliram Mittal
Age:71 years Occupation: Business
e) Mr. Rahul Rajendra Mittal
Age: 50 years Occupation: Business
f) Mrs. Kusum Mahendra Mittal
Age: 70 years, Occupation: Business
g) Mr. Ramesh Brahmadutt Mittal
Age: 73 years Occupation: Business
h) Mr. Ashwin Ramesh Mittal
Age:47 years Occupation: Business
I) Mr. Suresh Brahmadutt Mittal
Age:71 years Occupation: Business
j) Mr. Shailendra Parmeshwar Mittal
Age:70 years Occupation: Business
k) Mrs. Shalini Anil Mittal
Age:38 years Occupation: Business
l) Mr. Prateek Anil Mittal
Age: 38 years Occupation: Business
m) Mr. Ajay Shankarlal Mittal
Age:58 years Occupation: Business
n) Mr. Anoop family trust
Through its trustee,
Mr. Kishore Vishwanath Mittal,
Age: Adult, Occupation:
o) Mr. Ashok Vishwanath Mittal
Age:63 years. Occupation: Business

p) Mr. Sunil P. Mittal Family Trust
Through its trustee,
Mr. Ayush Sunil Mittal
q) Kanta Trust
Through its Trustee,
Mr. Rahul Rajendra Mittal

3. EMBLEM REALTY LLP
A Limited Liability Partnership Firm duly incorporated under provisions of the Limited Liability Partnership Act. 2008 and Having its Registered Office at: Sr. No. 36/1/1, Office No. 802, 8th Floor, Solitaire World, Chordia G. Mumbai-Bangalore Highway, Baner Gaon, Pune 411045, Maharashtra [LLPIN# ACB 4620
Through its Designated Partners:-
a) Mr. Atul Chordia
Age: Adult, Occupation: Business
b) Mr. Ashok Dhanraj Chordia
Age: Adult, Occupation: Business
c) Mr. Pramod Bhagchand Ranka
Age: Adult, Occupation: Business
d) Mr. Ankit Ujwalkumar Pagariya
Age: Adult Occupation: Business

....Respondents/
Orig.Defendants

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Mr. Sitesh Sharma a/w Mr. Anurag Mishra, Mr. Vijay Upadhyay and Ms.Asha Kanzariya for the Appellants/Applicants

Mr. Akshay Doctor a/w Mr. Parag Sawant, Ms. C. Gala, Mr. Bhumanyu Singh Champavat i/b P.S. Chambers for the Respondent No.1(d)

Mr. Rubin Vakil a/w Ms. Sonam Mhatre, Ms. Soloni Sulakhe, Ms. Declan Fernandez and Ms. Krushika Udeshi i/b Dhaval Vussonji & Associates for the Respondent No.2

Mr. Mayur Khandeparkar i/b Mr. Bishwajeet Mukherjee for the Respondent No.3 (Emblem Realty LLP)

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CORAM : SHARMILA U. DESHMUKH, J.
DATE :JUNE 17, 2026

JUDGMENT:

1. **Admit.** With consent, the Appeal is taken up for hearing forthwith.

2. The Appeal is filed by the original Plaintiffs, being aggrieved by the order dated 3rd February 2026 passed below Exhibit-5 in Special Civil Suit No.1195 of 2024 by the 8th Joint Civil Judge, Senior Division, Pune, rejecting the application seeking temporary injunction.

3. The suit came to be filed seeking *inter alia* specific performance in respect of the suit properties, which were described in the plaint as undivided piece and parcel of land admeasuring 40 R and undivided piece and parcel of land admeasuring 1 H 20 R out of the larger land being Survey Nos. 236 and 238, as Suit Property No. 1 and Suit Property No. 2 respectively. The case of the Plaintiff was that Plaintiff No. 1 was closely associated with and looked after the needs and means of late Merwan Feroz Cama, who was impleaded through his legal heirs, and that late Merwan Feroz Cama, as per his last Will and Testament dated 8th October 2020, along with a declaration dated

9th January 2021, has bequeathed and assigned 50% of his estate to Plaintiff No. 1 and the balance 50% to his wife, i.e., Laxmi Merwan Cama. It was pleaded that there were ongoing civil proceedings between late Merwan Cama and Defendant No. 2, i.e., Ganesh Construction Company, concerning the larger land. By separate agreements entered into between the legal heirs of deceased Merwan Cama and Defendant No. 2 as well as with Defendant No. 1(d), with the active connivance and collusion of Defendant No. 3, substantial consideration was paid resulting in the civil suit being illegally and fraudulently withdrawn by the Defendant No. 1(d).

4. It was pleaded that the larger land was initially owned by late Mancherji Firozshah Cama, who was the grandfather of late Merwan Feroz Cama, and Bachchubai Ardeshir Khusroji Wadia, each holding 50% share in the larger land. A Gift Deed dated 12th September 1947 was executed by late Mancherji Firozshah Cama in favour of his son, i.e. late Feroz Mancherji Cama, and daughter in law , late Mackly Feroz Cama, who became entitled to 25% each in the larger land. A Gift Deed dated 7th July 1953 was also executed by Bachchubai in favour of his son Khusro Ardeshir Wadia, who

became the owner of the balance 50% undivided share in the larger land. Late Mackly Feroz Cama expired on 3rd July 1950, leaving behind her husband, Feroz Mancherji Cama and her son, Merwan Feroz Cama, as her surviving legal heirs, who became entitled to 12.5% share each out of the undivided 25% share held by late Mackly Feroz Cama in the larger land. Thereby, Feroz Cama was entitled to 37.5% undivided share, and 12.5% undivided share was devolved upon Merwan Feroz Cama and the remaining balance 50% undivided share stood in the name of Khusro Ardeshir Wadia. The plaint further sets out that the said Feroz Cama and Khusro Wadia entered into certain property agreements with Defendant No. 2 in respect of an area admeasuring 9 H 53.06 R out of total area admeasuring 10 H 38 R of land bearing Survey No. 236 and an area admeasuring 9 H 34.85 R out of total area admeasuring 9 H 35 R of land bearing Survey No. 238. No Deeds/Agreements were ever executed by Merwan Cama in respect of his 12.5% undivided right, title, and interest in the larger land.

5. It is pleaded that Late Feroz Cama had executed a release deed dated 26th August 2008, releasing his 37.5% undivided share in the larger land in favour of Merwan Feroz Cama, which was duly

registered, and the name of late Merwan Cama came to be mutated in the relevant revenue records vide Mutation Entry No. 26757 dated 14th August 2010.

6. The plaint further sets out that there were multiple litigation filed in respect of the larger land by and against Merwan Feroz Cama, and one of the proceedings was Regular Civil Suit bearing RCS No. 5915 of 2012, in which an interim order was passed against Defendant No. 2 from creating third-party rights, which stood confirmed.

7. By the Interim Application, reliefs were sought against the Defendant Nos. 2 and 3 from creating third-party rights in the suit property and from changing the nature of the suit property and undertaking any development and/or construction on the suit property.

8. The Defendants opposed the grant of interim relief denying the rights of Merwan Cama in the suit property as alleged. It was contended that by the Indenture dated 12th September 1947, Mancherji Cama had gifted his half portion (50%) to Feroz Mancherji Cama and Mackly Feroz Cama as joint tenants, and after the demise of Mackly Cama on 3rd July 1950, Feroz Mancherji Cama

became the sole owner of the 50% undivided share and was alone entitled to deal with the same in his own right, to the exclusion of all others. By the Indenture dated 25th May 1989, Feroz Cama and Khusro Ardeshir Wadia sold the land admeasuring 23 acres and 23 gunthas out of Survey No. 236 and land admeasuring 23 acres and 4 gunthas out of Survey No. 238 to the partners of Defendant No. 2 Company by a registered Deed, and the effect was given in the revenue records vide Mutation Entry No. 15829 dated 18th October 1995. Subsequently, a Correction Deed was executed on 31st January 2012 by the parties, and Deeds of Confirmation were executed by Khusro Ardeshir Wadia and Feroz Mancherji Cama Ganesh Construction Company confirming the equal undivided share of Feroz Mancherji Cama in the larger land. Subsequently, Defendant No. 2 sold the entire larger land to Defendant No. 3 vide Deed of Conveyance dated 19th December 2023. The agreements of the Plaintiffs are all contingent contracts, the performance of which was dependent upon the suit being decreed in favour of Merwan Cama and with the withdrawal of the suit, the contingency has become impossible, and hence, both the agreements have become void and unenforceable.

9. The Defendant No. 1(d) claimed that the Defendant No. 1(d) was appointed as the Executor of the last Will and Testament dated 27th February 2023 of deceased Merwan Cama. The Defendant No. 1(d), in his capacity as Executor, has no privity of contract with the Plaintiffs under the alleged suit agreements.

10. By the impugned order dated 3rd February, 2026, the application came to be rejected broadly for the following reasons:

(a) Absence of proper description of the suit property and grant of injunction would amount to blanket injunction against the entire property.

(b) No relief of partition and separate possession was claimed under Section 22 of Specific Relief Act, though the agreements are in respect of undivided share in the larger land.

(c) Mutation Entry and confirmation deeds are in favour of the Defendant No. 2.

(d) Merwan Cama did not possess any right in the suit property at the time of execution of the agreements with the Plaintiffs.

(e) There is suppression in the plaint about the development agreement of 21st July, 1981, Indenture dated 25th May, 1989,

possession receipt dated 28th March, 1987 and Mutation Entry No. 15829 which records the name of Defendant No. 2.

(f) RCS No. 4915 of 2012 being withdrawn, the contingency of success of the suit has been impossible rendering the contingent agreements void.

(g) The issue of fraudulent withdrawal of RCS No. 4915 of 2012 cannot be decided while adjudicating the interim application.

11. Accordingly, the Trial Court held that no *prima facie* case had been made out, and that the balance of convenience was not in favour of the Plaintiffs, and rejected the application.

12. Mr. Sharma, Learned counsel appearing for the Appellants would submit that Section 22 of the Specific Relief Act permits amendment of the suit and the absence of relief of partition and separate possession is not fatal to the application for interim injunction. He would further point out that this Court, in Review Petition filed by the partners of Defendant No. 2 against Merwan Cama, wherein an injunction was passed against the Defendant No. 2, has held that late Merwan Cama had an undivided share in the property, the extent whereof would be contingent upon the adjudication of the earlier suit, and, in the event late Merwan Cama

failed in the suit, the question would arise whether he was at least entitled to a 12.5% share in the suit property. He would further point out that this Court has held that, in the absence of any definiteness in respect of the share of the Plaintiff i.e. Merwan Cama, the same can only be said to be an undivided share. He submits that the earlier order, therefore, accepted that late Merwan Cama had a share in the property.

13. He has taken this Court through the findings of the Trial Court and would contend that despite specific pleading of fraud in unconditional withdrawal of RCS No. 4915 of 2012, the Trial Court has declined to go into the said issue. He would point out that the settlement agreements with Defendant No. 1(d) resulting in withdrawal of the suit was for consideration of Rs. 20 crores and the recitals therein recognised that under the release deed, Feroz Cama had released all his rights in favour of late Merwan Cama.

14. He would further point out that the Defendant No. 1(d) had signed the settlement agreement as Administrator and not as an Executor, and the suit could not be withdrawn before obtaining the Letters of Administration. He would further point out that the Will of Merwan Cama was registered on 27th February 2023 at

11:14 a.m., and two minutes prior thereto, the Power of Attorney executed by Merwan Cama in favour of Defendant No. 1(d) was registered. He would point out that the Power of Attorney specifically states that the Defendant No. 1(d) had no right to sell the properties without the consent of Merwan Cama. He would submit that the legal heirs of Merwan Cama did not acknowledge the existence of the Will, which is the reason for separate agreements with Defendant Nos. 1(a) to 1(c), who are the legal heirs, and Defendant No. 1(d). He points out that under the Will of Merwan Cama, Defendant No. 1(d) has been appointed as the Administrator of the property/estate and also points out that the Will gives Defendant No. 1(d) 5% of the estate, not exceeding Rs. 10 crores, and by way of the settlement, Defendant No. 1(d) has received almost Rs. 20 crores from Defendant No. 2. He would point out the application filed by the legal heirs on 11th December 2023 in RCS No. 4915 of 2012 seeking permission to withdraw the suit on the ground that the legal heirs had entered into a settlement outside the Court.

15. He submits that the Agreement for Sale executed with the Plaintiffs was based on the outcome of RCS No. 4915 of 2012,

which has been withdrawn fraudulently. He submits that the Interim Application in the present proceedings has been rejected on the ground that Merwan Cama had no right, whereas the settlement agreements contains an implicit admission of the rights of Merwan Cama in the subject property. He submits that the grandfather of Merwan Cama had acquired the property in the year 1930 along with one Bachchubai as tenants-in-common, and the property which is acquired as tenants-in-common cannot be converted into joint tenancy. He submits that the entire genesis of the Defendants' case is based on joint tenancy, which is unsustainable. In support, he relies upon the decision of ***Babu Lal vs. M/s. Hazari Lal Kishori Lal & Ors.***[1]

16. Mr. Khandeparkar, learned counsel appearing for the Respondent No. 3, who is a subsequent transferee, submits that the provisions of Section 22(2) of the Specific Relief Act are mandatory, as it provides that if relief is not claimed, the same cannot be granted. He submits that the position which existed at the time of adjudicating the Interim Application was that no amendment had been sought and as the Agreements for Sale executed by the Plaintiffs were in respect of an undivided share

1 (1982) 1 SCC 525

without seeking the relief of partition, there could be no injunction.

17. He submits that in RCS No. 4915 of 2012, the deceased Merwan Cama had sought a declaration of ownership of the property not on the basis of his parents being tenants-in-common but on the ground of purported Release Deed executed by Feroz Cama in favour of Merwan Cama. He submits that the suit also contained an averment that the Agreement dated 25th May 1989 is void and not binding on the Plaintiffs, which constitutes an admission of the existence of the Agreement of 1989. He submits that, without obtaining a declaration as regards ownership of the property, Merwan Cama could not have executed the agreements and, without the suit being decreed, the agreements constituted contingent contracts and upon withdrawal of the suit, the contracts have become void.

18. He submits that the argument of fraud cannot be the primary argument. He would further point out that the Trial Court has rightly noted that, for the purpose of deciding the Interim Application, it was not necessary for the Court to go into the issue of the purported fraud in withdrawal of RCS No. 4915 of 2012, as

proceedings for restoration had already been filed and were pending. He would further point out that the Trial Court has noted the fact of suppression of documents, which were within the knowledge of the Plaintiffs, and therefore the Plaintiffs, even otherwise, were not entitled to any interim relief.

19. He submits that there was no privity of contract between the Plaintiffs and the Respondent No. 3, who had purchased the property from Respondent No. 2. He submits that the purported Agreement for Sale executed with the Plaintiff No. 1 was for a sum of Rs. 1.60 lakhs in the year 2012 and with the Plaintiff No. 2 for Rs. 30 lakhs, whereas the entire property was purchased by Respondent No. 3 for a sum of about Rs. 174 crores in the year 2023, which casts a doubt on the execution of the agreements themselves.

20. He would further point out the findings of the trial court that there is no proper description of the suit properties without which the injunction would amount to blanket injunction in respect of the entire property. He would further point out the provisions of Order VII Rule 3 of CPC mandating proper description of the property. He would further point out that the documents in respect of the

property were in favour of Defendant No. 2, who has alienated its rights in favour of the Defendant No. 3.

21. Mr. Rubin Vakil, learned counsel appearing for the Defendant No. 2, would adopt the submissions of Mr. Khandeparkar and would further contend that the Plaintiffs claim through Merwan Cama, and the effect of withdrawal of RCS No. 4915 of 2012 is that the Defendant No. 2's title through the document of 1989 stands confirmed. He submits that the fulcrum of Merwan Cama's case was the execution of the release deed, which was challenged by Feroz Cama as being fraudulent and that the mutation entry was overturned in the year 2011. He submits that the release deed was also executed on the basis of Power of Attorney, which was signed by Merwan Cama, both for the Releaser and the Releasee, which is, *prima facie,* a fabricated document.

22. He submits that the claim of the Plaintiffs is that the property stood in the names of Feroz Cama and Mackly Cama as tenants-in-common, whereas the Gift Deed would show that the property was to be held by Feroz Cama and Mackly Cama as joint tenants and not as tenants-in-common. He submits that the fact that Merwan Cama claimed through the release deed amounts to

an admission of the ownership of Feroz Cama, and unless Merwan Cama acquired title to the property, he could not convey any better title.

23. Mr. Akshay Doctor, learned counsel appearing for Defendant No. 1(d), submits that without seeking any relief against Defendant No. 1(d) in the suit, allegations have been made against the Defendant No. 1(d). He submits that the collusion and fraud are not pleaded in the plaint. He submits that the agreements were executed by the Defendant No. 1(d) as Administrator of the estate and not as an Administrator under the Will. He further submits that, under Section 213 read with Section 57 of the Indian Succession Act, as the deceased was a Parsi, there was no requirement of obtaining probate, and the property was situated outside India.

24. In rejoinder, Mr. Sharma would submit that the Trial Court has arrived at an incorrect finding of suppression of facts by pointing out the pleadings in the plaint. He submits that, in the earlier round of litigation, the order passed in the Review Petition specifically holds that the deceased Merwan Cama would be entitled to either 50% or 12.5% share upon adjudication of the suit,

and all the orders were annexed to the plaint and therefore, there is no suppression. He would submit that after acknowledging Merwan Cama's right while withdrawing RCS No. 4915 of 2012, it is no longer open for the Defendants to contend otherwise. He submits that the Sale Deed of 1989 was executed on the basis of a Power of Attorney and the Confirmation Deed came to be executed in the year 2011 after the filing of Merwan Cama's suit in the year 2010, which was subsequently renumbered in the year 2012. He submits that there was previously an injunction in favour of Merwan Cama in respect of the entire land in RCS No. 4915 of 2012 and that the Defendant Nos. 2 and 3 have orchestrated the entire fraud in January 2023. He points out the certificate issued under Section 281 of the Income Tax Act to Defendant No. 2 on a request made in October 2023 for sale of the subject land, whereas the withdrawal of the suit took place subsequently. He submits that the Defendants concealed the agreements executed with the legal heirs and Defendant No. 1(d).

25. He submits that there is a requirement of obtaining Probate/Letters of Administration, as the Will included properties in Mumbai, and therefore Section 57 of the Indian Succession Act

has no application. He submits that, under the agreements entered into by Merwan Cama with the Plaintiffs, the vendor had covenanted to place the Plaintiffs in actual and exclusive possession of the said subject area, which obligation is now required to be performed by the Defendants.

26. Rival contentions now fall for determination.

27. The purpose of grant of a temporary injunction in respect of suits concerning immovable property is to preserve the *status quo* of the subject property till the final decision. The correct description of the property is therefore an essential ingredient and finds statutory recognition in Order VII Rule 3 of the Code of Civil Procedure which mandates description of property sufficient to identify it. Coming to present case, the plaint describes the larger land comprising the total area of Survey Nos. 236 and 238 and describes the suit properties as Suit Property No. 1 and Suit Property No. 2. Suit Property No. 1 is described as an undivided piece and parcel of land admeasuring 40 R out of the larger land, being the subject matter of the Agreement for Sale dated 22nd May 2012, and Suit Property No. 2 is described as an undivided piece and parcel of land admeasuring 1 H 20 R out of the larger land,

being the subject matter of the Agreement for Sale dated 18th October 2013. The plaint does not describe whether the suit properties are part of Survey No. 236 or Survey No.238 or portions of Survey Nos. 236 and 238. The Agreement for Sale dated 22nd May 2012, executed in favour of Plaintiff No. 1, describes the subject property as 40,000 square feet out of Survey Nos. 236 and 238. Similarly, the Agreement for Sale dated 18th October 2013 describes the subject property as a piece and parcel of agricultural land bearing Survey Nos. 236 and 238.

28. The Interim Application seeks an injunction from creating any third-party rights in respect of the suit property or from carrying out any development or construction activity on the suit property. The provisions of Section 22 of the Specific Relief Act permits the Plaintiffs to seek the relief of partition and separate possession in an appropriate case and provides that no relief shall be granted by the Court unless it has been specifically claimed. As the claim of specific performance was *qua* undivided share of the subject property, this was an appropriate case in which the relief for partition and separate possession ought to have been claimed, without which no relief of injunction could be granted. The

purchase of an undivided share does not give title to any definite share and without claiming relief of partition, no relief of specific performance could be granted. Though the plaint could be amended to seek the relief of partition, the grant of interim injunction is dependent on the position that existed at the relevant time. The Plaintiff is required to make out a *prima facie* case of entitlement to the relief of specific performance of the suit properties, for purpose of injunction and without seeking relief of partition, no such case was made out. To grant an injunction in respect of an undivided share, would effectively put a restraint on the entire land and no such blanket injunction could be granted.

29. The Plaintiffs claim to the suit properties is founded on the agreements for sale executed by deceased Merwan Cama in favour of the Plaintiffs. The agreements for sale were contingent contracts dependent on the success of RCS No. 4915 of 2012 and this Court has not heard Mr. Sharma to contend to the contrary. Being contingent contracts, the withdrawal of RCS No. 4915 of 2012 deals a crushing blow to the Plaintiffs' claim to the suit property. Whether there was fraudulent withdrawal of the suit is subject matter of an independent restoration application filed by

the Plaintiffs for restoring RCS No. 4915 of 2012. In the present proceedings, pending the adjudication of the issues in the restoration application, the Trial Court could not have ventured into the aspect of fraudulent withdrawal of the suit and has rightly declined to do so.

30. The submissions of Mr. Sharma in assailing the impugned order concentrated on the aspect of fraud in withdrawal of RCS No. 4915 of 2012, which submissions are relevant for purpose of restoration application. The impact of withdrawal of the suit on the present proceedings is that the agreements for sale have been rendered void and incapable of being enforced. No rights could be claimed by Plaintiffs on the basis of void agreements.

31. The Plaintiffs' right was inchoate right, dependent on Merwan Cama's right being adjudicated in the suit. The prayers sought by the deceased Merwan Cama in RCS No. 4915 of 2012 was declaration of ownership in respect of the larger land which implied the absence of ownership right of deceased Merwan Cama. The suit was premised on the release deed purported to have been executed by Feroz Cama in favour of Merwan Cama on 20th August, 2008. The deceased Merwan Cama himself asserting its ownership

rights on the basis of release deed, the Plaintiffs cannot be heard to contend that the subject property devolved upon Merwan Cama by inheritance upon death of his mother Mackly Cama. The contention also cannot be accepted for the reason that the Gift Deed executed by Mancherji Cama in favour of Feroz Cama and Mackly Cama gifts the property as joint tenants. Upon death of Mackly Cama, it is Feroz Cama who becomes the owner of the subject property and it is Feroz Cama who had alienated the property in favour of Defendant No. 2 in the year 1989. The fulcrum of the case of Merwan Cama's ownership was the Release Deed of the year 2008, which was executed on basis of purported Power of Attorney executed by Feroz Cama. The Release Deed was termed by Feroz Cama fraudulent and the mutation entry in name of Merwan Cama came to be deleted.

32. One of the many hurdles that obstructs the grant of injunction is the subsisting agreement of the year 1989 in favour of Defendant No. 2 and without the document being dislodged, no right could be claimed by the deceased Merwan Cama and neither by the Plaintiffs. The indenture of the year 1989, the mutation entry, the development agreements are documents which *prima*

facie reflects the ownership of Defendant No. 2 of the subject properties and has been rightly noted by the Trial Court. In the teeth of the documents *prima facie* evidencing the ownership rights of Defendant No. 2, on the basis of agreements for sale, which even otherwise, does not transfer any ownership rights to the Plaintiffs and being contingent contracts rendered void upon withdrawal of RCS No. 4915 of 2012, the Defendants could not have been restrained from dealing with the subject property.

33. The Trial Court has considered the documents placed on record to arrive at a finding that, at the time of execution of the Agreements dated 22nd May 2012 and 18th October 2013, Merwan Cama was not having title in respect of the suit property. The withdrawal of R.C.S. No. 4915 of 2012 puts an end to any claim for ownership of the subject property by Merwan Cama and resultantly of the Plaintiffs and unless the claim is revived, no injunction could have been granted against the Defendants. The subsequent framing of the issue of fraudulent withdrawal of RCS No. 4915 of 2012 does not assist the case of the Plaintiffs for grant of injunction.

34. The settlement agreements on which much reliance has been placed by Mr. Sharma records that, with an intention to put a quietus to the litigation, the parties have agreed to settle the dispute. The recitals to the Settlement Agreement also record that based on the purported Release Deed dated 26th August 2008, Merwan Cama had filed several proceedings, which also included the R.C.S. 4915 of 2012. *Prima facie* perusal of the clauses of the Settlement Agreement would indicate that Defendant No. 2 has not accepted that under the Release Deed, Merwan Cama had acquired any right, as it refers to the Release Deed as a `purported Release Deed' and that only for the purpose of putting a quietus to the litigation, the dispute is settled.

35. The contention of Mr. Sharma to assail the withdrawal of the suit by Defendant No. 1(d) by contending that Defendant No. 1(d) was appointed as an Administrator and not as an Executor and that the Will was a suspicious document are all arguments best left to be adjudicated in the application for restoring RCS No. 4915 of 2012.

36. Insofar as the order passed in the Review Petition is concerned, the proceedings arose out of RCS No. 4915 of 2012 and

any *prima facie* observations as regards the rights of Merwan Cama by way of an interim order would not survive the final withdrawal of the proceedings.

37. As the Plaintiffs have failed to make out a *prima facie* case of being entitled to specific performance of the Agreements, which became void by reason of withdrawal of RCS No. 4915 of 2012, no injunction could be granted. As the Defendants claim under a document of 1989 and the Plaintiffs claim under subsequent agreements, the balance of convenience is in favour of the Defendants.

38. The Trial Court has rightly considered that no proper description of the properties was provided and, hence, a blanket injunction could not be granted. As the entire suit property remains undivided, and in the absence of relief of partition and separate possession being sought, the application at Exhibit-5 could not be granted. Based on the documents, the Trial Court has come to a *prima facie* finding that Merwan Cama did not have title in respect of the suit property at the time of execution of the Agreements dated 22nd May 2012 and 18th October 2013. At the time of execution of the Agreements, the suit seeking a declaration

of ownership was pending and, without Merwan Cama succeeding in the said suit, he could not transfer any better title to the Plaintiffs. The Trial Court has rightly noted that the Plaintiffs have failed to make out a *prima facie* case and that balance of convenience is not in favour of Plaintiffs.

39. It is well settled that the Appellate Court would not interfere with the exercise of discretion and substitute its own view for that of the Trial Court unless the discretion exercise by the Trial Court is shown to be arbitrary and perverse. In light of the above discussion, the Trial Court has exercised its discretion in judicious manner warranting no interference in appeal.

40. The decision in ***Babulal v. Hazari Lal Kishori Lal and Others*** *(supra)* interprets Section 22 as a rule of pleading that in order to avoid multiplicity of proceedings, the Plaintiff may claim a decree for possession in a suit for specific performance even though the right to possession accrues only when the suit for specific performance is decreed. Pertinently, the Hon'ble Apex Court has clarified that the expression *"in an appropriate case"* in Section 22(1) indicates that it is not always incumbent upon the Plaintiff to claim possession, partition, or separate possession in a suit for

specific performance of a contract for the transfer of immovable property, and that has to done where the circumstance demanding the relief for specific performance of contract of sale embraces within its ambit not only execution of the Sale Deed but also possession of the property conveyed under the Sale Deed. Applying the said principle to the facts of the present case, as the Plaintiffs claim to have purchased an undivided share in the subject property, the relief of partition was mandated.

41. In light of the above discussion, there is no perversity which is demonstrated in the findings of the Trial Court. Resultantly, the Appeal fails and stands dismissed.

42. Needless to clarify that the observations made herein are only *prima facie* observations and the Trial Court to decide the suit on its own merits and in accordance with law, uninfluenced by the observations in the present order.

43. In light of the above, nothing survives for consideration in the Interim Application. The same stands disposed of accordingly.

SHARMILA U. DESHMUKH, J.