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HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

AFR
Reserved on 03.09.2026
Pronounced on 23.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW
FIRST APPEAL FROM ORDER No. - 354 of 2025

Rekha Saxena and another

◆..Appellant(s)

Versus

Roman Catholic Diocese, Allahabad Pvt. Ltd. Thru. Director General the Bishop and another

◆..Respondent(s)

Counsel for Appellant(s)

:

Sridhar Awasthi,

Counsel for Respondent(s)

:

Madhav Om, Akshata Singh, Bipin Dutt Dixit, Dharmendra Kumar Trivedi, Samir Om

Court No. - 20

HON'BLE PRASHANT KUMAR, J.

1. Heard Sri Sridhar Awasthi assisted by Sri Aryan Arora, learned counsel for the appellants and Sri Amrendra Nath Tripathi, learned Senior Advocate assisted Ms. Akshata Singh along with Sri Bipin Dutt Dixit and Dharmendra Kumar Trivedi, learned counsel appearing for the respondents and perused the record.
 2. The instant First Appeal From Order has been preferred under Order XLIII, Rule 1(r) read with Section 104 of the Code of Civil Procedure, 1908 (hereinafter referred as ◆C.P.C.◆), against the impugned order dated 03.07.2025 passed by the Civil Judge (S.D.), Raebareli (hereinafter referred as ◆Trial Court◆) in Regular Suit No.238 of 2023 (Rekha Saxena and another Vs. The Roman Catholic Dioesease of Allahabad Private Ltd. and another), whereby application under Order XXXIX Rule 1 & 2 of C.P.C. filed by the Appellants-Plaintiffs has been dismissed.
- Factual Matrix :
3. On 02.06.1987, a registered Power of Attorney was executed in favour of one Augustine Paul authorizing him to execute sale deed in respect of the property in dispute, however this registered Power of Attorney was subsequently stated to be cancelled on 18.09.1987.
 4. In exercise of the registered Power of Attorney Mr. Augstine Paul had executed a sale deed on 22.09.1987 in favour of mother-in-law (namely Late Savitri Srivastava) of the appellant no.1 and subsequently the house over said land was constructed. At that point of time, the buyer (appellants◆ mother-in-law) was not aware about the cancellation of the Power of Attorney.
 5. Subsequently, the cancellation of the Power of Attorney was registered on 29.09.1987.
 6. A suit was filed by the respondents being the Original Suit No.100 of 1991 in the Court of Civil Judge, Raebareli, seeking cancellation of the said sale deed, on the ground that the Power of Attorney was revoked and subsequently registered.
 7. Later since construction was raised over the land in question, the suit was amended and modified with a further prayer for removal of the construction and delivery of the possession.

8. The said suit was decided ex-parte on 21.04.2001 wherein the civil court held as follows:

❖वादी का वाद एकपक्षीय रूप से आशप्त किया जाता है। बेनामा दिनांक 22-9-1987, जो बुक नं.1, जिल्द नं. 839 के पृष्ठ 216/217, क्रम 462 सब-रजिस्ट्रार, रायबरेली के कार्यालय में है, को निरस्त किया जाता है। इस आदेश की एक प्रति सब-रजिस्ट्रार, रायबरेली को अनुपालनार्थ प्रेषित की जाए। प्रतिवादी को स्थायी निषेधाज्ञा द्वारा आडमदपुर नफूल के प्लाट नं. 10 से इस आशय के साथ निषेधित किया जाता है कि वह उपरोक्त प्लाट पर कोई तामीलात न करे।"

9. Though, the suit was amended with prayers for removal of construction and delivery of possession but the Trial Court only granted the relief of cancellation of sale deed and restraining Appellants' mother-in-law from raising any further construction. No relief for possession or removal of appellants from possession were granted.

10. Decree of ex-parte judgement dated 21.04.2001 was prepared on 07.04.2023, and on the basis of the decree, the respondents tried to evict and dispossess the appellants, who are in continuous and peaceful settled possession of land in question since 1987 through predecessor in interest.

11. Being aggrieved by the action of the respondents, the appellants preferred a suit for permanent injunction being Regular Suit No.238 of 2023 before the Court of Civil Judge (Senior Division), Raebareli, seeking permanent injunction and protection of possession of the appellants from the premises in question.

12. Along with the suit for permanent injunction, an application under Order XXXIX, Rules 1 & 2 C.P.C. was also filed by the appellants seeking the temporary injunction to restrain the respondents from interfering from their peaceful possession over the suit property.

13. The respondents filed an objection to the application filed under Order XXXIX Rules 1 & 2 C.P.C. and also filed written statements in the said suit. The respondents submitted that the suit was not maintainable as the appellants-plaintiffs had no title of the suit property.

14. After hearing the parties, the Trial Court rejected the application which was filed under Order XXXIX, Rules 1 & 2 vide its impugned order dated 03.07.2025, which has been assailed by the appellants by filing the instant appeal under Order XLIII, Rule 1(r) read with Section 104 of the C.P.C.

Submissions of learned counsels for the parties :

15. Shri Sridhar Awasthi, learned counsel for the appellants submitted that the predecessor-in-interest of the appellants had purchased the property in the year 1987 and since then they are in possession over the same.

16. Learned counsel for the appellants submitted that on the date of execution of sale deed there was no registered cancellation of the Power of Attorney which could defeat the rights claimed by the purchaser under the aforesaid sale deed. ❖

17. Learned counsel for the appellants submitted that the Trial Court did not considered that the Suit for cancellation of sale deed executed in 1987 was time barred and though the judgement was passed on 21.04.2001 but the decree was prepared in the year 2023, however the same was after the lapse of about 22 years, the decree was prepared and thereafter the execution proceedings were initiated by the respondent no.1., On 07.07.2023, the execution court sent an intimation to the Sub Registrar, Raebareli in terms of the decree passed in the suit for giving effect to the ❖cancellation of the sale deed.

18. He further submitted that since in September, 2023, there was a threat of eviction by the respondents, hence the appellants had preferred the suit for permanent injunction along with the application for temporary injunction under Order XXXIX, Rules 1 & 2 of the C.P.C.

19. He further submitted that the application under Order ❖XXXIX, Rules 1 & 2 was rejected on the ground that the appellants are required to prove the ownership and the possession over the property in dispute for grant of temporary injunction. He further submitted that the Trial Court did not considered the very fact that the appellants are in long standing, continuous and peaceful possession since 1987 through predecessor in interest.

20. Learned counsel for the appellants further submitted that the impugned order passed by the Trial Court is perverse and contrary to the ratio laid down by Hon❖ble Supreme Court in the matter of Rame Gowda (Dead) by Lrs. Vs. M. Varadappa Naidu (Dead) by Lrs. And another; reported in (2004) 1 SCC 769, wherein it is provided that even where the title is disputed, the possession cannot be disturbed forcibly except by due process of law.

21. Learned counsel for the appellants further submitted that impugned order has been passed on an erroneous appreciation of the judgments cited before the Trial Court, which do not operate against the appellants.

22. He further submitted that the impugned order was passed by the Trial Court placing reliance on the judgment passed by Hon❖ble Supreme Court in the matter of Dalpat Kumar and others Vs. Prahlad Singh, reported in (1992) 1 SCC 719 and has also placed reliance upon another judgment of Hon❖ble Supreme Court in the matter of Kashi Math Sansthan Vs. Srimad Sudhindra Teerth Swami reported in AIR 2010 SC 296. He drawn attention of this court to the relevant para of the impugned judgement, the same is extracted as under :

❖6. ❖...इस सम्बंध में मेरे द्वारा माननीय सर्वोच्च न्यायालय की विधि व्यवस्थाओं का सादर अवलोकन किया गया। माननीय सर्वोच्च न्यायालय द्वारा दलपत कुमार बनाम प्रह्लाद सिंह 1992 (1) SCC 719 में यह अभिनिर्धारित किया गया है कि "The existence of a prima facie right and its violation is a condition precedent for granting temporary injunction. If the plaintiff has no chance of success in the suit, the interim relief cannot be granted." इसी प्रकार एक अन्य विधि व्यवस्था काशी मठ संस्थान बनाम श्रीमद सुधीन्द्र तीर्थ स्वामी AIR 2010 SC 296 में माननीय सर्वोच्च न्यायालय द्वारा यह अभिनिर्धारित किया गया है कि "If the plaintiff is not entitled to a decree of permanent injunction, he cannot claim temporary injunction. ❖❖

23. He submitted at bar that aforesaid observations, as reproduced in the impugned order, do not constitute the ratio of the judgment and such lines are not present in the said judgment.

24. He further submitted that the order passed by the Trial Court has been passed on the whims of the Court and the judgment cited in the impugned order and observations made are not what the Hon❖ble Supreme Court has held in both the judgments.

25. Learned counsel for the appellants further submitted that the ratio laid down by Hon❖ble Supreme Court in the matter of

Dalpat Kumar (Supra) is completely in favour of the appellant with regards to the fundamentals to consider while granting injunction specially, prima facie case.

26. It is also submitted that the said judgments lay down the settled principles, which the Court, while considering an application for temporary injunction, to examine whether the plaintiff has established a prima facie case, whether the balance of convenience lies in his favour, and whether refusal to grant injunction would cause irreparable injury.

27. Learned counsel for the appellant has further placed reliance on the judgment of Hon^{ble} Supreme Court in the matter of Shruti Mahav Sharma Vs. Sumera Singh reported in 2026 SCC Online 1549, wherein the Supreme Court has held that on the application for temporary injunction, it is necessary for the Court to examine the material on record in the context of prima facie case, balance of convenience and whether refusal to grant injunction would cause irreparable injury.

28. Per contra, Sri Amrendra Nath Tripathi, learned Senior Advocate appeared on behalf of respondents and vociferously opposed the contentions of appellants and submitted that the power of attorney was initially executed in favour of one Augustine Paul on 02.06.1987, however, the same was cancelled on 18.09.1987 and the revocation was subsequently registered on 29.09.1987.

29. He further placed reliance upon the provisions of Section 47 of the Registration Act, 1908, and submitted that any registered document shall operate from the time from which it would have commenced and would not be made applicable from the date of registration. Since the power of attorney was revoked on 18.09.1987, hence the date of registration would relate back as the same would stand revoked from the date of revocation. It is further submitted that on 22.09.1987, Augustine Paul had no authority to execute the sale deed in favour of mother-in-law of the appellants.

30. To buttress his arguments, he has further placed reliance on the judgment passed by the Hon^{ble} Supreme Court in the matter of State of Karnataka v. Ragini Narayan, reported in (2016) 10 SCC 424. The relevant para is extracted as under :

◆ 15.◆Section 47 of the Registration Act, 1908 reads as under:

◆47.◆Time from which registered document operates.◆A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.◆

In view of the above provision of law, we are in agreement with the submission of the learned counsel for Respondent 1 that the document registered on a subsequent date, operates from the date of execution, not from the date of registration.◆
(emphasis supplied)

31. Sri Tripathi further submitted that on a plain reading of the application filed under Order XXXIX Rule 1 and 2 C.P.C. does not show that any cogent material was filed or any document was placed to prove that the appellant was in possession over the property in dispute at the time of filing of the suit.

32. Learned counsel for the respondents further submitted that the appellants has failed to establish even a prima facie case in his favour. He submitted that the appellants have not filed any document to show that they are in actual physical possession.

33. Learned counsel for the respondents further submitted that the sale deed upon which the appellants seek to found their claim of title has already been cancelled pursuant to decree passed in Original Suit No.100 of 1991 and, hence no prima facie case is made out. It is further submitted that sale deed itself stands cancelled by a decree of a Trial court and the appellants cannot claim any prima facie case on the basis of the said sale deed.

34. In rejoinder, learned counsel for the appellants submitted that the stand taken by the respondents with regard to possession is contrary to the pleadings made in the counter affidavit filed in the present appeal. In Paras 37, 38 the respondents themselves made averments which clearly shows that the appellants are in possession over the property in question.

35. He further submitted that the impugned order has been passed without properly appreciating the pleadings and the appellants have made a prima facie case for protection of their possession, which is in existence since very beginning.

36. No other arguments raised by the learned counsel for the appellants as well as learned counsel for the respondents.

Analysis :

37. Heard learned counsel for the appellants as well as learned counsel for the respondents and perused the available records.

38. The sole point of determination raised in the instant appeal is as to whether the appellants are entitled to get the order of Temporary injunction under Order XXXIX Rule 1 and 2 of the C.P.C..

39. Before dealing with the issues in the instant matter, the court would delve into the relevant provisions. Section 94(c) read with Order XXXIX, Rules 1 & 2 of the Civil Procedure Code, 1908, which deals with ◆temporary injunction◆.

40. Section 94 of the Code, 1908, reads as under :-

94. Supplemental Proceedings. - In order to prevent the ends of justice from being, defeated the Court may, if it is to prescribed-

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.

41. The provisions of Order XXXIX Rules 1 & 2 of the Code, 1908, reads as follows :-

◆Order XXXIX

TEMPORARY INJUNCTION & INTERLOCUTORY ORDERS

1. Cases in which temporary injunction may be granted. ♦ Where in any suit it is proved by affidavit or otherwise ♦

(b) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(c) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] 1 his creditors,

(d) [that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.] 2

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] 3 as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach. ♦ (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) [* * *] 4

(4) [* * *] 5 ♦

42. On bare reading, it is clear that the preservative purpose is clearly echoed in the structure of the statute itself: Section 94 of the Code speaks of preventing the ends of justice from being defeated, and Order XXXIX Rule 1(a) speaks of property in danger of being wasted, damaged or alienated.

43. It provides that in any suit, if it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or that defendant threatens, or intends, to remove or dispose of his property, or otherwise cause injury to plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal of property in dispute in the suit as the Court thinks fit, until disposal of the suit or until further orders.

44. An interlocutory injunction does not adjudicate or determine the substantive rights of the parties; rather, it is intended to operate as a temporary protective measure to preserve the subject matter of the litigation and ensure that the eventual trial does not become an exercise in futility. A temporary injunction is an interim relief granted by the Court during the pendency of the suit where the plaintiff establishes a prima facie case, demonstrates that refusal of such relief would result in irreparable injury, and satisfies the Court that the balance of convenience lies in favour of granting such protection.

45. The Objective of Temporary Injunction/Interlocutory Orders/Interim Order has been dealt many times by the Hon♦ble Supreme Court as well as by this Court.

46. The House of Lords ♦ classical formulation in the matter of American Cyanamid Co. ♦ v. ♦ Ethicon Ltd., ♦ reported in [1975] A.C. 396 has been adopted verbatim in India:

♦ The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where ♦ the balance of convenience ♦ lies. ♦

(emphasis added)

47. The Indian formulation, adopting the American Cyanamid ♦'s language, is found in ♦ the matter of Wander Ltd. v. Antox India pvt. Ltd., reported in 1990 (Supp) SCC 727, wherein the Hon♦ble Supreme Court has held that the interlocutory remedy is intended to preserve in ♦ status quo, the rights of the parties which may appear on a ♦ prima facie ♦ case. The relevant para of Wander Ltd. (supra) is extracted as under :

♦ 9. ♦ Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

♦ ...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the ♦ balance of convenience ♦ lies. ♦

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted. ♦

(emphasis added)

48. The Hon'ble Supreme Court in the matter of Seema Arshad Zaheer & Ors. v. Municipal Corporation of Greater Mumbai & Ors., reported in (2006) 5 SCC 282, had laid down the principles governing the grant of temporary injunction under Order XXXIX Rules 1 and 2 CPC and held as under:-

◆ The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the Plaintiff:

(i) existence of a prima facie case as pleaded, necessitating protection of the Plaintiff's rights by issue of a temporary injunction;

(ii) when the need for protection of the Plaintiff's rights is compared with or weighed against the need for protection of the Defendant's rights or likely infringement of the Defendant's rights, the balance of convenience titling in favour of the Plaintiff; and

(iii) clear possibility of irreparable injury being caused to the Plaintiff if the temporary injunction is not granted.

In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the Plaintiff's conduct is free from blame and he approaches the court with clean hands. ◆

(emphasis added)

49. The Hon'ble Supreme Court in the matter of Zenit Mataplast Pvt. Ltd. ◆ v. ◆ State of Maharashtra, ◆ reported in (2009) 10 SCC 388 ◆ has explained that an interim order is intended to protect the subject-matter of the proceedings until disposal of the case, so that the ultimate relief, if the party succeeds, is not rendered meaningless. It has been further held that the temporary injunction is governed by three basic principles -(i) prima facie case, (ii) balance of convenience, and (iii) irreparable injury. The relevant para of Zenit Mataplast Pvt. Ltd. (supra) is extracted as under:

"30. Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial (vide ◆ Anand Prasad Agarwalla ◆ v. ◆ Tarkeshwar Prasad ◆ [(2001) 5 SCC 568] , and ◆ State of Assam ◆ v. ◆ Barak Upatyaka D.U. Karmachari Sanstha ◆ [(2009) 5 SCC 694 : (2009) 2 SCC (L&S) 109]).

31. Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no straitjacket formula can be laid down. There may be a situation wherein the respondent-defendant may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted (vide ◆ M. Gurudas ◆ v. ◆ Rasaranjan ◆ [(2006) 8 SCC 367 : AIR 2006 SC 3275] and ◆ Shridevi ◆ v. ◆ Muralidhar ◆ [(2007) 14 SCC 721]). Grant of temporary injunction is governed by three basic principles i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction [vide ◆ S.M. Dyechem Ltd. ◆ v. ◆ Cadbury (India) Ltd. ◆ [(2000) 5 SCC 573 : AIR 2000 SC 2114] and ◆ Anand Prasad Agarwalla ◆ [(2001) 5 SCC 568] , SCC p. 570, para 6]."

(emphasis added)

50. The Hon'ble Supreme Court in the matter of Gujarat Bottling Co. Ltd. v. Coca Cola Co., reported in (1995) 5 SCC 545, has determined that the issuance of an injunction is a discretionary and an equitable remedy, and the authority to grant injunction must exercise its power keeping in mind and align with sound judicial principles. The Hon'ble Supreme Court held that a party ◆ seeking an injunction ◆ or seeking to ◆ vacate one already ◆ granted ◆ must approach the ◆ Court with ◆ clean hands and ◆ fair, honest conduct. If the party ◆ is at fault ◆ or has ◆ acted inequitably, the ◆ Court may refuse ◆ relief. This shows that despite the fulfillment of all fundamental tenets and essential conditions, the additional circumstances may still result in denial or granting such relief. The relevant para is extracted as under :

"47. ◆ In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings."

(emphasis added)

51. With regards to grant and refusal of interlocutory injunction, the Hon'ble Supreme Court in the matter of Wander Ltd. (supra), has opined the scope of interference by the appellate court with discretionary power of Trial Court. The relevant para is extracted as under :

◆ 14. ◆ The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the

material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. ♦

(emphasis added)

52. With regards to the scope of appellate interference with discretionary orders, the Hon'ble Supreme Court in the matter of Ramakant Ambalal Choksi v. Harish Ambalal Choksi & Ors., reported in (2024) 11 SCC 351 has held that an appellate court should not interfere with the discretionary order of the trial court merely because another view is possible. Interference is warranted only where the order is arbitrary, capricious, perverse, or contrary to the settled principles of law. The relevant extract is as under :

♦APPELLATE JURISDICTION UNDER ORDER 43 OF THE CODE OF CIVIL PROCEDURE

20. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in ♦Wander Ltd. ♦v. ♦Antox India (P) Ltd., 1990 Supp SCC 727 Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial Judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:

(a) ♦First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and

(b) ♦Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trade mark on which the passing off action is founded.

21. With regard to (a), this Court held thus: (Wander case ♦[Wander Ltd. ♦v. ♦Antox India (P) Ltd., 1990 Supp SCC 727] , SCC p. 733, para 14)

♦14. ♦ In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. ♦ The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below. ♦ If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. ♦

22. This Court, while arriving at the above findings, relied on its earlier judgment in ♦Printers (Mysore) (P) Ltd. ♦v. ♦Pothan Joseph ♦[Printers (Mysore) (P) Ltd. ♦v. ♦Pothan Joseph, 1960 SCC OnLine SC 62] , wherein it was held thus: (Printers case ♦[Printers (Mysore) (P) Ltd. ♦v. ♦Pothan Joseph, 1960 SCC OnLine SC 62] , SCC OnLine SC para 9)

♦9. ♦ as has been observed by Viscount Simon LC in Charles Osenton & o. ♦v. ♦Johnston, 1942 AC 130 (HL), the law as to reversal by a court of appeal of an order made by a Judge below in the exercise of his/her discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case. ♦

23. It is pertinent to note that in ♦Printers ♦[Printers (Mysore) (P) Ltd. ♦v. ♦Pothan Joseph, 1960 SCC OnLine SC 62] this Court had held that ignoring relevant facts is also a ground for interfering with the discretion exercised by the trial court.

Furthermore, Viscount Simon LC in ♦Charles Osenton & Co. ♦v. ♦Johnston ♦[Charles Osenton & Co. ♦v. ♦Johnston, 1942 AC 130 (HL)] , after stating the above, went on to quote Lord Wright's decision

in ♦Evans ♦v. ♦Bartlam ♦[Evans ♦v. ♦Bartlam, 1937 AC 473 (HL)] : (Evans case ♦[Evans ♦v. ♦Bartlam, 1937 AC 473 (HL)] , AC p. 486)

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

24. In ♦Evans case ♦[Evans ♦v. ♦Bartlam, 1937 AC 473 (HL)] , Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the trial court exercised its discretion arbitrarily or incorrectly in the circumstances.

25. What flows from a plain reading of the decisions in ♦Evans ♦[Evans ♦v. ♦Bartlam, 1937 AC 473 (HL)] and ♦Charles Osenton ♦[Charles Osenton & Co. ♦v. ♦Johnston, 1942 AC 130 (HL)] is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:

(a) Examine whether the discretion has been properly exercised i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and

(b) In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.

26. The principles of law explained by this Court in ♦Wander ♦[Wander Ltd. ♦v. ♦Antox India (P) Ltd., 1990 Supp SCC 727] have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.

27. In ♦Neon Laboratories Ltd. ♦v. ♦Medical Technologies Ltd. ♦[Neon Laboratories Ltd. ♦v. ♦Medical Technologies Ltd., (2016) 2 SCC 672 : (2016) 2 SCC (Civ) 190] , this Court held that the appellate court should not flimsily, whimsically or lightly

interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

28. In *Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan*, (2013) 9 SCC 221, this Court emphasised on the principles laid down in *Wander* and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39CPC. The basis for substituting the view of the trial court should be mala fides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below: (SCC p. 230, para 20)

20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the learned trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the appellate court was wrong in its conclusions what is sought to be emphasised is that as long as the view of the trial court was a possible view the appellate court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in *Wander Ltd. v. Antox India (P) Ltd.* [*Wander Ltd. v. Antox India (P) Ltd.*, 1990 Supp SCC 727] (emphasis supplied)

29. This Court in *Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd.* [*Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd.*, (2023) 1 SCC 634 : (2023) 1 SCC (Civ) 301] observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial Judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

30. This Court in *Monsanto Technology LLC v. Nuziveedu Seeds Ltd.* [*Monsanto Technology LLC v. Nuziveedu Seeds Ltd.*, (2019) 3 SCC 381 : (2019) 2 SCC (Civ) 158], observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

31. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well-settled principles governing the scope of jurisdiction of the appellate court under Order 43CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in *Wander case* [*Wander Ltd. v. Antox India (P) Ltd.*, 1990 Supp SCC 727]. (emphasis added)

53. So far as the principle of granting temporary injunction is concerned, the Hon'ble Supreme Court in the matter of Anand Prasad Agarwalla *v. Tarkeshwar Prasad*, reported in (2001) 5 SCC 568, has held that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction. Also, the Hon'ble Supreme Court in the matter of Dalpat Kumar (Supra) has held as under :

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is a prima facie case in his favour which needs adjudication at the trial. The existence of the prima facie right and infringement of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that the balance of convenience must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (emphasis added)

54. "Possessio contra omnes valet praeter eum cui ius sit possessionis" is a known legal latin maxim that means possession is valid against everyone except the person who has the true legal right to possess it. The rightful owner can only dispossess the occupier/trespasser who is in possession without any title by following due procedure of law. Due Process of law should be adopted to evict person in possession even if he is a trespasser or he is not rightful owner, the Hon'ble Supreme Court in the matter of Rame Gowda (supra) has clearly held that the rightful owner has to take recourse to law, he cannot take the law on his own hands. The relevant paras are extracted as under :

8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injunction even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram v. Delhi Admn.* [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806], *Puran Singh v. State of Punjab* [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] and *Ram Rattan v. State of U.P.* [(1977) 1 SCC 188 : 1977 SCC (Cri) 85]. The authorities need not be multiplied. In *Munshi Ram case* [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh case* [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. The settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase settled possession does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of settled possession (SCC p. 527, para 12):

- (i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;
- (ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;
- (iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and
- (iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession. (emphasis added)

55. Thus, this court has no embargo to hold that even where the person in long standing possession and is alleged to be a trespasser, the majesty of law cannot be supplanted by the impulse of force. Due process of law must be followed for his eviction; the rightful owner, however strong his title or just his claim, must seek the aid of law and cannot take the law into his own hands. Possession can only be disturbed only by due procedure sanctioned by law i.e., any direction or order for eviction or dispossession from competent court.

56. Coming to the facts of the present case, the judgment dated 21.4.2001 which was passed by the Trial Court only pertains to the cancellation of the sale deed and any further constructions on the disputed land in question, but do not contain any direction or order for eviction or dispossession.

57. Way back in the year 1996, the Hon'ble Supreme Court in matter of *Samir Sobhan Sanyal v. Tracks Trade (P) Ltd.*, reported in (1996) 4 SCC 144, has clearly held that without any decree or order of eviction of the party from the demised premises, he cannot be dispossessed from the premises without any due process of law. The relevant para is extracted as under :

6. It would thus be clear that without any decree or order of eviction of the appellant from the demised premises, he has been unlawfully dispossessed from the premises without any due process of law. The question, therefore, is: whether he should be allowed to remain in possession till his application under Order 21, Rules 98 and 99 is adjudicated upon and an order made. Though the learned counsel for the first respondent and also for the third respondent, who is one of the transferees from the sixth respondent, sought to contend that the appellant has no right to remain in possession after the lessee, *M/s India Foils Ltd.* had admitted by a resolution that the appellant has no right to remain in possession, we are not impressed with the

arguments. At this stage, we are only concerned with his admitted possession of the demised premises. What rights would flow from a contract between him and his employer is a matter to be adjudicated in his application filed under Order 21, Rules 98 and 99, CPC. At this stage, it is premature to go into and record any finding in that behalf. The learned counsel for the first respondent also repeatedly sought to bring to our notice that on account of the orders of the Court Officer passed by the High Court the maintenance cost has been mounting up due to the delay in disposal of the proceedings in various courts. Even with regard to that, we are not impressed with the same. Since the letter of the law should strictly be adhered to, we find that high-handed action taken by Respondents 1, 3 and 6 in having the appellant dispossessed without due process of law, cannot be overlooked nor condoned. The court cannot blink at their unlawful conduct to dispossess the appellant from the demised property and would say that the status quo be maintained. If the court gives acceptance to such high-handed action, there will be no respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law-abiding citizens and rule of law would remain a mortuary.

(emphasis added)

58. The facts of the case and the material available on record clearly shows that the property in dispute was purchased by the mother-in-law of Appellant No.1 through a registered Power of Attorney holder. It is also evident from the record that although the said Power of Attorney was stated to be revoked, such revocation had not been registered as on the date of execution of the sale deed. Therefore, at the relevant time, the Power of Attorney continued to remain operative, and it cannot be contended that the Power of Attorney holder had no authority or power to execute the said sale deed. The records also clearly establish that the appellants have been in long, continuous and peaceful possession of the suit property since 1987 and thus filed a suit for permanent injunction along with an application under Order XXXIX Rule 1 and 2 of the C.P.C. for obtaining Temporary injunction. Documentary evidences with regards to their settled possession are also on record. In Paras 37 and 38 of the Counter Affidavit filed by the respondents in the instant appeal, they themselves made averments which clearly shows that the appellants are in possession over the property in question. The paras are extracted as under :

37. That the contents of paragraph 3 are false, baseless and are not admitted and hence denied. In reply thereof it is submitted that the respondents after the decree of the suit made the application before the Court and District Magistrate for the dispossession of appellants. Since the property comes inside the school premises and every other day the appellants have been causing unnecessary disturbance inside the school. It is further submitted that the allegation made in para 3 insofar as the using of force to disposes the appellants are absolutely false. The respondents have been following the due of law since the beginning.

38. That the contents of paragraph 4 are wrong, misconceived and hence denied In reply thereof, it is submitted that the appellants despite having the knowledge kept an blind eye towards the order passed against them. They appellants never challenged any order passed against them, instead they have filed a suit for injunction concealing the material facts. It is further submitted that the possession of appellant was never lawful since beginning as the basis of their possession, the sale deed dated 22.9.1987 is void and illegal.

59. In view of above dicta, foregoing discussion, this court is of view that while deciding the application of Temporary Injunction, the court is not expected to finally determine the disputed questions. The appellants have established a prima facie case as they are in long lasting, settled and peaceful possession of the suit property since 1987 through predecessor in interest.

60. The argument of learned counsel for the respondent that the prima facie case is not made out as the sale deed is cancelled seems to be unsustainable as the case of appellant is clearly on the basis of their long, standing and peaceful possession since 1987. Thus, a prima facie case is made out in the favour of appellants on the basis of thier possession which is also admitted by the respondents.

61. The balance of convenience also lies in favour of the appellants. Their possession for more than three decades, appellant no.1 being a widow and appellant no.2 being a minor daughter and the property in dispute is their residential house, thus, if disturbed during the pendency of the suit, would cause them irreparable injury and loss which cannot be adequately compensated in terms of money or subsequently cannot be restored if they wins the suit.

62. Any attempt to forcibly dispossess the appellants, otherwise than in accordance with the procedure established by law, cannot be permitted and may attract consequences under the applicable penal laws. In the circumstances, the grant of a temporary injunction in favour of the appellants during the pendency of the suit would serve to preserve the subject matter of the litigation and protect the existing state of possession, without prejudicing the rights of the respondents. The respondents shall remain at liberty to establish their claim and raise all their grievances on merits before the Trial Court.

63. Accordingly, this Court is of the considered view that the appellants have satisfied the requisite tests for grant of temporary injunction, namely, the existence of a prima facie case, balance of convenience in their favour, and the likelihood of irreparable injury in the event is the injunction is refused.

64. In view of above, the impugned judgment and decree dated 03.07.2025 is hereby set aside. Consequently, the instant appeal is allowed and a temporary injunction is granted in favour of the appellants during the pendency of the suit before the Trial Court.

65. The instant appeal is being considered strictly within the limited parameters and touchstones of granting temporary injunction. This Court does not deem it appropriate, at this stage, to examine the validity or otherwise of the Power of Attorney on the basis of which the sale deed in respect of the land in question was executed. Accordingly, the contentions raised in that regard are not being considered for the purpose of adjudication of the instant appeal, as any observation or finding thereon may have a bearing upon the merits of the suit pending before the Trial Court.

66. It is, therefore, made clear that the observations made by this Court herein are confined solely to the consideration of the prayer for temporary injunction. Any observation made by this Court in the instant appeal shall not prejudice and shall not be construed as an expression of opinion on the merits at the stage of trial. The Trial Court independently decide the pending suit

in accordance with law and on the basis of the evidence brought on record.

67. The parties are directed to bear their own costs.

68. Trial Court record if any shall be return to the concerned court along with copy of this order.

69. Before parting with this case, this Court places on record its deep appreciation for the remarkable assistance rendered by Mr. Utkarsh Shukla, Research Associate.

(Prashant Kumar,J.)

September 23, 2026

Arjun/-

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