A.F.R.

Judgment Reserved on- 15.12.2025

Judgment Delivered on- 22.01.2026

Neutral Citation No. - 2026:AHC:16005

Court No. - 38

Case :- FIRST APPEAL FROM ORDER No. - 928 of 2020

Appellant :- M/S Sai Dham Apartments And Another

Respondent :- Ravi Kumar Mehrotra And 2 Others

Counsel for Appellant :- Anjali Goklani, Manish Goyal (Senior Adv.), Nikhil Mishra

Counsel for Respondent :- A.K. Upadhyay, Mukesh Kumar Singh, Sunil Kumar Misra

Hon'ble Sandeep Jain, J.

1. The instant first appeal has been filed by the plaintiff under Order 43 Rule 1(r) of the CPC against the impugned order dated 13.3.2020 passed by the Court of Civil Judge(Senior Division), Allahabad in O.S. No. 342 of 2019 Messers Sai Dham Apartments and another Vs. Ravi Kumar Mehrotra and others, whereby plaintiffs interim injunction application no. 6-C under Order 39 Rule 1 and 2 CPC has been rejected.

Plaint Case

2. Factual matrix is that the plaintiff appellant filed O.S. No. 342 of 2019 in the lower court with the averments that the plaintiff no.1 Messers Sai Dham Apartments is a registered partnership firm and Rajesh Kumar Gupta is its Chief Executive Officer. Plaintiff no. 2 Messers Paras Presidency is also a registered partnership firm of which Sanjiv Jain is a partner.

3. It was further averred that freehold plot numbers YY/1,YY/2,YY/3 and YY/4, the details of which were mentioned in the plaint, the combined area of which was described as letters ABCD in the plaint map, hereinafter called the disputed land, was owned by Puran Chand Mehrotra, defendant no.1 Ravi Kumar Mehrotra and defendant no.2 Smt. Rashmi Mehrotra along with the house existing thereon. It was further averred that the above owners of the land, used to run Volkswagen car showroom on it and a workshop was also situated on this land. Puran Chand Mehrotra, was the father of Ravi

Kumar Mehrotra and father-in-law of Smt. Rashmi Mehrotra, who died on 15.3.2017. It was averred that at present the defendant no.1 & 2 are the owners of the disputed property.

4. It was further averred by the plaintiffs that the above land owners were interested to raise a multi-storey residential complex over their aforesaid plot measuring 3251.29 m², the details of which have been mentioned at the foot of the plaint and which was earmarked by letters ABCD in the plaint map. It was further averred that the plaintiff no.1 firm is a builder and the above land owners negotiated with it through its Chief Executive Officer/Partner Rajesh Kumar Gupta to raise multi storeyed residential complex over the said land, who gave a proposal on behalf of plaintiff no.1, to construct the multi-storeyed residential complex on the said land of the aforesaid owners investing the money of the plaintiff no.1. It was further averred by the plaintiffs that the land owners agreed and accepted the proposal of the plaintiff no.1.

5. It was further averred that the above land owners namely late Puran Chand Mehrotra, Ravi Kumar Mehrotra and Smt. Rashmi Mehrotra entered into a memorandum of understanding (MOU) on 30.3.2014 with plaintiff No.2, which is a firm promoted by plaintiff no.1 , to raise multi storeyed residential complex over the disputed land and on behalf of all the land owners, the MOU was signed by Ravi Kumar Mehrotra. The MOU included the heirs, executors and assignees of the land owners and the plaintiffs.

6. It was further averred that before executing the said MOU, the land owners had received ₹ 2 crores from the plaintiffs, the details of which were provided in the plaint. The proposed residential flats/houses were to be constructed by the plaintiffs as per plan sanctioned by Allahabad Development Authority(ADA), Allahabad now Prayagraj Development Authority(PDA). It was further averred that the plaintiff no.2 paid ₹ 68,58,370/-to the ADA for sanction and approval of the map which was also acknowledged by the ADA. It was further averred that till the date of filing of the suit, the plaintiffs have invested approximately ₹ 3.53 crores in furtherance of constructing multi storeyed complex on the disputed land, the

payment details of which were mentioned in the plaint. It was further averred that the map was to be proved and sanctioned in the name of the above land owners, hence the demand notice dated 15.10.2015 by ADA, was sent to land owners which was given to plaintiff no.1, upon which the plaintiff no.2 paid the amount to ADA from its bank account. It was further averred that the plaintiff no.2 paid ₹ 3,77,869/- to the Nagar Nigam for NOC on 7.4.2017 and Rs. 1,62,569/- to Jalkal Vibhag for NOC on 31.10.2015.The plaintiffs obtained NOC dated 18.12.2015 from S.P. traffic, fire department and electricity department, in part performance of the above mentioned MOU.

7. It was further averred that the land owners, after the aforesaid payment to the ADA for approval of the map, also gave the physical possession to the plaintiffs, which was acknowledged by defendant no.1 by giving an affidavit, which was in part performance of the said MOU. It was further averred that for raising multi storeyed residential complex on the disputed land, the plaintiffs established the office on the red portion which was specified by letter EFGH in the plaint map, which was earlier used as workshop of Volkswagen car agency.

8. It was further averred that the plaintiffs gave the work order to Mahtab Ahmad, contractor for demolition on the disputed land, which was completed in the month of March 2019 and the disputed land was being used for promotional activities by the plaintiffs. It was further averred that for project publicity, the plaintiffs got printed the brochure and have also given advertisement in newspapers and have also booked the flats and have received advance payment from the prospective purchasers of the flats on 31.10.2015 and 23.11.2015.

9. It was further averred that the defendant no. 3 have got no concern with the disputed land, who filed his own map for revision of the original map already sanctioned on 5.10.2015, due to which the map submitted by the plaintiffs could not be finally sanctioned and approved. The plaintiffs filed objection dated 28.6.2019 against the revision of the map. It was averred that the construction of proposed multi storeyed residential complex on the

disputed land could not be started because the defendant no.3 submitted his own map for revision and objection of the plaintiffs was pending for disposal. It was averred that defendant no.3 was a powerful and influential person, who was threatening to interfere in the promotional activities of the plaintiffs on the disputed land, who has also threatened to dismantle the office of the plaintiffs existing on the place shown by letter EFGH and IJAB in the plaint map, who has threatened to remove the flex board signage of the plaintiffs existing on the place shown by the letters UV, who was also threatening to get printed his own brochure for the publicity, hence the plaintiffs were compelled to file the suit. The plaintiffs prayed for the following reliefs :-

> *By means of permanent injunction the defendant no.3, his agents, servants and associates be restrained from doing any sort of promotional activities on the suit land, be restrained from interfering in promotional activities of the plaintiffs over the suit land, be restrained from demolishing the office of the plaintiffs and defendant no.1 & 2, be restrained from doing any sort of negotiation with the defendant no.3, regarding raising of multi storeyed residential complex over the suit land, and be restrained from entering into an MOU or builder agreement or any sort of agreement with any other third party with regard to construction of residential complex on the suit land.*

Written Statement of Defendants

10. The defendants in their Written Statement have admitted that they are the owner of the disputed land on which a showroom and service centre of Volkswagen was situated, which was not operational. It was averred that after the death of Puran Chand Mehrotra, defendant no.1 and 2 along with daughter Rashmi Kapoor are his heirs.

11. It was averred that the defendants were interested in getting the multi storeyed residential complex constructed on the disputed land. It was further averred that the alleged MOU dated 30.3.2014 was a forged and fabricated document, on the basis of which the instant suit was not legally

maintainable. It was averred that the alleged map was sanctioned in the name of defendants regarding which no advantage could be taken by the plaintiffs. It was further averred that the defendants have returned an amount of Rs.1.31 crores to the plaintiffs. It was further averred that the defendants have returned the amount deposited by the plaintiffs with the ADA. The defendants accepted that a payment of Rs.3,77,869/- was made by plaintiff no. 2 to Nagar Nigam and Rs.1,62,569/- to Jalkal Vibhag but the above amounts were refunded to the plaintiffs, by them,as per the agreed terms and conditions. The possession of the plaintiffs on the disputed land was denied by the defendants. It was averred that the defendants were in possession of the disputed property. It was further averred that no construction whatsoever is existing on the disputed land. It was averred that the plaintiffs have malafidely launched a fraudulent scheme for extorting money in the garb of selling alleged flats constructed on the disputed land, for which the defendants are not bound.

12. The defendants averred that the plaintiffs in order to usurp the disputed land entered into a builder agreement but the MOU dated 30.3.2014 was not prepared accordingly, hence the defendants have returned the advance money given by the plaintiffs. It was averred that defendant no.1 has returned an amount of Rs. one crore, as well as, the amount deposited by the plaintiffs with PDA, and inspite of this, for blackmailing and harassing the defendants, the plaintiffs have filed the suit on the basis of an alleged MOU, which was not legally maintainable. The plaintiffs are not in possession of the disputed property, as such, the suit was barred under Section 34, 38 and 41 of the Specific Relief Act. The disputed property was valued at about ₹ 20 crores as such, the plaintiffs have insufficiently valued the suit and consequently, inadequate amount of court fees has been paid. With these submissions, it was prayed that the suit filed by the plaintiffs was liable to be dismissed.

Ad-interim injunction application

13. During the pendency of the suit the plaintiffs filed an ad interim injunction application no. 6-C under Order 39 Rule 1 read with Section 151

CPC for restraining the defendant no.3 and his agents, servants and associates from doing any sort of promotional activities on the suit land, for restraining him from interfering in promotional activities of the plaintiffs over the suit land and also for restraining him from demolishing the office of the plaintiffs and for restraining the defendant no.1 and 2 from doing any sort of negotiation with the defendant no. 3 regarding raising of multi storeyed residential complex on the disputed land and from also restraining them from entering into an MOU or builder agreement or any sort of agreement with any other third party with regard to construction of residential complex on the disputed land, till the pendency of the suit, which was supported by affidavit 7-C of Rajesh Kumar Gupta, which reiterated all the grounds taken earlier in the plaint.

14. The defendants opposed the ad-interim injunction application of the plaintiffs by filing objection(paper no.14-C) supported by affidavit(paper no.15-C) of defendant no.1 Ravi Kumar Mehrotra , in which all the averments of the written statement were reiterated. It was further averred that after cancellation of the deal with the plaintiffs, for raising constructions on the disputed land, as per the sanctioned building plan, NOC was obtained from the concerned departments, in the name of defendants, not plaintiffs. It was further averred that the defendants have never acknowledged that the possession of the disputed land has been handed to the plaintiffs. It was further averred that no alleged construction was existing on the disputed land, the disputed land was lying vacant. It was further averred that neither the prima-facie case nor balance of convenience was in favour of the plaintiffs and if, plaintiffs ad-interim injunction application was not rejected, the defendants shall suffer irreparable loss.

15. The plaintiffs in the rejoinder affidavit have accepted that in the month of March 2019, with the consent of the land owners, through contractor Mehtab Ahmed, the Volkswagen showroom, service centre and workshop standing on the disputed land have been demolished. It has also been accepted by the plaintiffs that Rashmi Kapoor is the daughter of late Puran Chand Mehrotra, but it was averred that till Puran Chand Mehrotra was

alive, there was no share of Rashmi Kapoor in the disputed land. It was averred that the plaintiffs have in all spent an amount of ₹ 3.53 crores on the disputed land, which has not been returned by the landowners. It was further averred that a personal loan of Rs. 1,97,30,000/- for purchasing the land was taken by defendant no.1 and 2 and their son Rohan from Rajesh Kumar Gupta and an amount of ₹ 1.46 crores has been returned by the above defendants, towards repayment of that loan. It was further averred that defendant no. 1 and 2 have received an amount of Rs. 2.60 crores from defendant no.3 on 12.6.2019, who were trying to make the MOU infructuous, and if they succeed in doing so, then the purpose of filing the instant suit shall be frustrated.

Reasoning of Trial Court

16. The trial court by impugned order has concluded that the alleged MOU was executed between the plaintiffs, defendant no.1,2 and Puran Chand Mehrotra but it has only been signed on behalf of plaintiff by Rajesh Kumar Gupta and defendant no.1 Ravi Kumar Mehrotra. It was further concluded that at the time of the alleged execution of MOU, Puran Chand Mehrotra was alive but inspite of being the owner, he has not signed the MOU. Besides this, defendant no.2 Rashmi Mehrotra has also not signed it. It was further concluded that the plaintiffs have sought injunction on the basis of alleged MOU against all the owners of the disputed land, but the alleged MOU does not bear the signature of all the land owners, as such, it cannot be enforced against those land owner, who have not signed it. It was further concluded that since the MOU was not signed by all the land owners, hence there was no consent on the part of all the land owners regarding the alleged MOU, as such, the MOU cannot be enforced against all the owners.

17. The trial court further concluded that even if, it is assumed that an MOU was indeed executed between the parties on 30.3.2014, even then the MOU contains an arbitration clause in para no.30, according to which, in case of dispute between the parties, the dispute will be resolved by an arbitrator, who will be appointed with consent of the parties, and the provisions of Arbitration and Conciliation Act, 1996 will be applicable on such

proceedings. The trial court concluded that prima-facie in view of the above arbitration agreement, the trial court had no jurisdiction to decide the dispute.

18. The trial court further concluded that as per para-33 of the MOU, it was the bounden duty of the builder to get the MOU registered but it has not been registered, which amounts to violation of the terms and conditions of the MOU. It was further concluded that the alleged MOU was not duly stamped as per the provisions of the Stamp Act and in view of this, prima-facie there was no force in MOU.

19. The trial court further concluded that the plaintiffs have accepted that defendant no. 1 and 2 are the real owners of the disputed land, against whom, injunction cannot be granted. The trial court further concluded that as per para 8 of the MOU, the alleged possession of the plaintiffs was of a licensee only for construction purposes, which created no right or interest in the favour of builder, which merely granted permission to the plaintiffs for undertaking construction in the disputed land, which cannot be treated as the settled possession of the plaintiffs and due to this reason, the plaintiffs were also prima-facie not in possession of the disputed land.

20. The trial court further concluded that the plaintiffs have sought the relief of restraining defendant no.1 and 2 from entering into any agreement with third-party which in reality amounts to enforcement of alleged MOU but they have not sought any relief for its specific performance, whereas, prima-facie the plaintiffs are neither the owner nor in possession of the disputed land and the alleged MOU does not create any binding and legally enforceable agreement between the parties.

21. It was further concluded by the trial court that the plaintiffs in the rejoinder affidavit have accepted that they have received back the money from the defendants but it was submitted by the plaintiffs that it related to return of the personal loan taken from Rajesh Kumar Gupta, by defendant no.1, for purchasing the land. On the basis of the above admission of the plaintiffs, the trial court concluded that prima-facie the money has been returned by the defendants to the plaintiffs. The trial court concluded that

whether the returned money was personal loan, it will be decided after evidence of the parties. The trial court also concluded that since the defendants were not paid any amount from the bank account of the plaintiff firms, as such there was no requirement for the defendants to return the amount to the plaintiff firms bank account.

22. In view of the above reasons assigned by the trial court, the plaintiffs ad interim injunction application no.6-C was dismissed, aggrieved against which, the plaintiffs have filed the instant appeal under Order 43 Rule 1(r) CPC.

Submissions of learned counsel for plaintiff-appellant

23. Learned senior counsel Shri Manish Goyal for the plaintiff-appellants submitted that an MOU was executed between the parties, according to which residential flats for housing purposes was to be constructed by the plaintiffs on the disputed land of the defendant no.1 and 2 and as per the terms and conditions of the MOU, the plaintiffs had also paid an amount of about Rs.2 crores to the defendant no.1 and 2 and in part performance of the MOU, the plaintiffs are also in possession of the disputed land but still, the trial court has held otherwise. It was further submitted that the MOU does not create any right in the disputed land because the ownership of the disputed land remains with the defendants, hence the MOU was not required to be registered in accordance with the provisions of the Registration Act, but the trial court has held otherwise. It was further submitted that since the parties had acted in terms of the MOU, there was no reason to doubt its execution and existence, but the trial court has held otherwise. It was further submitted that if the defendants managed to create third-party rights in the disputed land and enter into any builder agreement with third-party, to raise construction on the disputed land, then it will seriously prejudice the plaintiffs because they have invested a lot of money on the marketing of the proposed flats which are to be constructed on the disputed land, which has not been refunded by the land owners. It was further submitted that the trial court has misappreciated the above facts and has wrongly rejected the

plaintiffs ad interim injunction application. In support of his submissions learned Counsel has relied upon the following case law :-

(1) *Uday Pratap vs.Digamber Singh 2013 SCC OnLine All 8292.*

(2) *K.Kasturi and others vs.C. Mohan and others 2007(1)Law Weekly 560(Madras).*

(3) *Rolta Infrastructure and Technology Services Pvt. Ltd. vs. Department of Information Technology and Electronics, Government of West Bengal 2024 SCC OnLine Cal 105.*

(4) *The interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, IN RE (2024) 6 SCC 1 (by 7 Judges).*

(5) *M/s Ashoka Builders & Promoters and another vs.M/s Edward Keventer (Successors) P.Ltd. and others 1993 (26)DRJ 489.*

(6) *Sardar Balbir Singh vs.Atma Ram Srivastava 1976 SCC OnLine All 374(Full Bench).*

Submissions of learned counsel for defendant respondents

24. Per contra, learned counsel for the defendant-respondents submitted that the impugned order of the trial court is perfectly legal and justified. It was submitted that the alleged MOU was not signed by all the owners of the disputed property, which was also not produced in original before the trial court, which was the basis of the suit filed by the plaintiffs, which allegedly created rights in favour of the plaintiffs but it was not duly stamped and registered in accordance with the provisions of the Stamp Act and Registration Act, as such, the trial court has not erred in not relying upon it for granting any relief to the plaintiffs. It was further submitted that the defendant no.1 and 2 are the real owners of the disputed land against whom the relief of injunction cannot be granted. It was further submitted that the plaintiffs have neither sought any relief for the specific performance of the MOU nor sought any declaration regarding its legal enforceability on the land owners and have only claimed the relief of simplicitor permanent injunction, as such, the suit was not legally maintainable in the absence of

any relief of specific performance and declaration. It was further submitted that the plaintiffs are also not in possession of the disputed land as such, neither any prima-facie case nor any balance of convenience lies in their favour hence, the trial court has not erred in rejecting the plaintiffs ad interim injunction application, which requires no interference from this Court in exercise of its appellate jurisdiction. Learned counsel in support of his submission has relied upon the following case law :-

(1) *Anathula Sudhakar vs.P.Buchi Reddy(Dead) by LRs.& ors. (2008) 4 SCC 594.*

(2) *Vinod Kumar and others vs.Sudha Land Ventures and Homes Pvt. Ltd. 2015(8)ADJ 387(DB).*

(3) *Civil Revision no. 111 of 2015 Subash Chand Garg and others vs. Messers HKS Developers Pvt. Ltd. and others decided on 5.6.2020 by Single Judge Bench of this Court.*

(4) *FAFO no.290 of 2015 Subash Chand Garg and others vs. Messers HKS Developers Pvt. Ltd. and others decided on 21.12.2016 by Division Bench of this Court.*

25. I have heard the learned counsel of both the sides, perused the impugned order, the record of the lower court and the case law submitted by them.

Conclusion of this Court

Execution of MOU between the parties

26. The plaintiffs contended that regarding the disputed land an MOU was executed between the land owners and the plaintiffs on 30.3.2014, a copy of which has been filed by the plaintiffs in the original suit, which has been denied by the defendants in their written statement. It was further submitted by the defendants that at the time of the execution of the alleged MOU on 30.3.2014, the ownership of disputed land vested in Puran Chand Mehrotra, Ravi Kumar Mehrotra and Smt. Rashmi Mehrotra but from the perusal of the MOU submitted by the plaintiffs before the court, it was apparent that it was only signed by defendant no.1 Ravi Kumar Mehrotra , as such it was not binding and cannot be enforced against all the land owners.

27. It is apparent that the plaintiffs have alleged in the plaint that the ownership of the disputed land vested in Puran Chand Mehrotra, Ravi Kumar Mehrotra and Smt. Rashmi Mehrotra, which is also apparent from the photo copy of sale deeds of disputed property filed by the plaintiffs in the original suit, but it is hard to understand why the MOU was not signed by Puran Chand Mehrotra and Smt. Rashmi Mehrotra. It is further apparent that no power-of-attorney has been executed by the other owners in favour of the defendant no.1 Ravi Kumar Mehrotra, authorising him to execute an MOU on their behalf. It is also apparent that Puran Chand Mehrotra has died intestate on 15.3.2017, leaving behind defendant no.1 Ravi Kumar Mehrotra (son) and Rashmi Kapoor(daughter), as legal heirs. It is apparent that in the absence of any Will, Rashmi Kapoor has also inherited 1/2 share of the deceased in the disputed property, but no MOU has been executed between Rashmi Kapoor and the plaintiffs, regarding the disputed property. In view of the above facts, it is hard to understand how regarding the disputed land, which belongs to defendant no.1,2 and Rashmi Kapoor, an MOU, which has not been signed by defendant no.2, Puran Chand Mehrotra and Rashmi Kapoor, can be legally enforced.

Non-filing of original MOU

28. It is further apparent that the plaintiffs have not filed the original MOU in the trial court, which is the basis of the suit. Learned counsel for the plaintiff appellants submitted that the original MOU can be filed at any time before the framing of issues by the trial court, and even subsequently, with the leave of the court, in accordance with Order 7 Rule 14 read with Order 13 Rule 1 CPC, relying upon the case law of ***Uday Pratap Singh*** (supra).

29. The Apex Court in the case of ***Kapil Kumar Sharma Vs. Lalit Kumar Sharma and another (2013)14 SCC 612***, has held that leave can be granted to file documents under Order 7 Rule 14 CPC when cross examination of the witness had not yet commenced.

30. It is true that the Apex Court in the above referred case of ***Kapil Kumar Sharma*** (supra) and this Court in the case of ***Uday Pratap Singh*** (supra) has held that Order 7 Rule 14 read with Order 13 Rule 1 of CPC are procedural

in nature and consequently, it was held that it is not a mandatory provision. In view of this, the plaintiff can file the original document at the time of framing of the issues and if he fails to do so, the same would not be taken in evidence without the leave of the court. In view of this, non-filing of the original MOU is not fatal to the plaintiffs case.

Whether MOU creates any rights in favour of plaintiffs

31. Learned Senior Counsel for the plaintiff appellants submitted that the MOU does not create any vested right in favour of the plaintiffs in the disputed land because the ownership remains with the land owners, which has not been transferred. It was further submitted that in the light of the judgment of the Constitution Bench of the Apex Court in the case of ***The interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, IN RE (2024) 6 SCC 1 (By 7 Judges)*** this issue was not relevant, as such the trial court has erred in concluding that the MOU could not be considered to be legally enforceable document because it was neither stamped nor registered.

32. The Constitution bench of the Apex Court in the case of ***The interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899***(supra) was considering the situation where an arbitration agreement was in existence between the parties and for enforcing that agreement, for either referring the matter by the Court to an arbitrator under Section 8 of the Arbitration and Conciliation Act 1996 or for appointing an arbitrator by the Court under Section 11 of the Act of 1996, whether at that stage an objection can be taken by the contesting party, before the court, that the arbitration agreement cannot be acted upon because it was unstamped and unregistered.

33. It was held by the Apex Court that Sections 33 and 35 of the Stamp Act cannot be allowed to operate in proceedings under Section 11(or Section 8, as the case may be), in view of the non-obstante clause in Section 5 of the Act of 1996. It was further held that it is for the Arbitral Tribunal and not the Court which may test whether the requirements of a valid contract and a valid arbitration agreement are met. If the Tribunal finds that these

conditions are not met, it will decline to hear the dispute any further. If it finds that a valid arbitration agreement exists, it may assess whether the underlying agreement is a valid contract.

34. It was further held by the Apex Court that by enacting Section 16 of the Arbitration Act, the Parliament has permitted an agreement to arbitrate to be preliminarily enforced even if it is only an agreement. After parties have been referred to arbitration under Section 8 of the Arbitration Act or after the appointment of arbitrators under Section 11 of the Act, the Arbitral Tribunal will have jurisdiction to determine all questions and issues in dispute between the parties. It was further held that once the Arbitral Tribunal has been appointed, it will act in accordance with law and proceed to impound the agreement under Section 33 of the Stamp Act if it sees fit to do so. It has the authority to receive evidence by consent of the parties, in terms of Section 35. It was further held that the procedure under Section 35 may be followed thereafter. It was further held that the impounding of an agreement which contains an arbitration clause at the stage of the appointment of an arbitrator under Section 11(or Section 8 as the case may be) of the Arbitration Act will delay the commencement of arbitration.

35. It was further held by the Apex Court that non-stamping or insufficient stamping of an instrument does not render it invalid or non-existent. It was further held that the Referral Court at Section 11 stage, should not examine or impound an unstamped or insufficiently stamped instrument, but rather leave it for the determination of the Arbitral Tribunal. It was further held that when a party produces an arbitration agreement or a certified copy, the Referral Court only has to examine whether an arbitration agreement exists in terms of Section 7 of the Arbitration Act. It was further held that the Referral Court under Section 11 is not required to examine whether a certified copy of the agreement/instrument/contract discloses the fact of payment of stamp duty on the original.

36. The Constitution Bench of the Apex Court finally concluded as under:-

(i)**Agreements which are not stamped or are inadequately stamped are**

inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;

(ii)Non -stamping or inadequate stamping is a curable defect;

(iii)An objection as to stamping does not fall for determination under Sections 8 or11 of the Arbitration Act. The Court concerned must examine whether the arbitration agreement prima-facie exists;

(iv)Any objections in relation to the stamping of the agreement fall within the ambit of the Arbitral Tribunal; and

(v) The decision in **N.N.Global** (2023)7 SCC 1 and **SMS Tea Estates** (2011) 14 SCC 66 are overruled. Paragraph 22 and 29 of **Garware Wall Ropes** (2019) 9 SCC 209 are overruled to that extent.

37. It is apparent that the Constitution Bench of the Apex Court was only concerned whether at the stage of exercising jurisdiction by the Court under Section 8 or 11 of the Arbitration and Conciliation Act 1996, the Court can examine whether the arbitration agreement was unstamped and as such, was inadmissible in evidence and whether the Court was justified in considering that objection at that stage. It is apparent from the above decision that the Court cannot examine that issue while exercising jurisdiction under Section 8 or 11 of the Act of 1996, and this issue can be raised before the Arbitral Tribunal, which may decide it in accordance with law. It is further apparent that the Apex Court has held such agreement to be inadmissible in evidence, but not void ab initio and after payment of proper stamp duty, it becomes a legally enforceable agreement.

38. It is apparent that in the instant case the matter does not relate to exercise of jurisdiction by the Court under Section 8 or 11 of the Arbitration and Conciliation Act 1996, but the issue is of enforcement of unstamped and unregistered MOU by the plaintiffs, which contains an arbitration clause, the execution of which has been denied by the land owners/defendants. It is further apparent that neither party has invoked the arbitration clause in the MOU, for referring the dispute/matter to the arbitrator, as such, the Constitution Bench judgment relied on by the learned senior counsel for the appellants, does not help the plaintiff-appellants.

39. It is well-settled that the character of a document is not to be determined on the basis of its nomenclature and it is to be interpreted on the basis of its recitals. In view of this, for ascertaining the true character of the MOU, it will be apposite to mention the relevant clauses of the alleged MOU. Clause 9,12,13, 14, 19, 30 and 33 of the MOU read as under:-

> *(9)That on completion of the project i.e. completion of entire construction of multi storeyed complex, the 58% of land owner and saleable area along with the prorata land of the multi storeyed complex on each floors shall be solely owned and possessed by the owners and the remaining 42% saleable area along with the prorata land of the multi storeyed complex on each floors shall be owned by the builder. The constructed and saleable area on each floor shall be shared in 58% and 42% ratio on all the floors between the landowner and the builder. The land owners and the builder shall have roof rights in the aforesaid proportion of 58% and 42% respectively but the commercial sanctioned shall be exclusively of the land owners only and if any charges levied by ADA shall be borne by the landowners only.*
>
> *(12)That the entire 58% saleable area owned by the owners as mentioned herein before shall absolutely vest in the owners and the owners alone shall be entitled to either retain or execute sale MOUs of the same at their own discretion by their own signatures without any interference of the builder or its successors or assignees or nominees.*
>
> *(13)That the entire 42% saleable area owned by the builder as mentioned herein before shall absolutely vest in the builder and the builder shall alone entitled to either retain or sell the same at their own discretion by the signature of its CEO or by its authorised officer without any interference by the owners or their heirs, legal representatives, executors or assignees or nominees. But the builders are permitted to book independent residential dwelling*

units and accept advance only for their share after signing of this MOU.

(14)That the owners and the builder shall also own respectively in proportion of 58% and 42% saleable area on all the floors. The owners and the builder shall be entitled to either retain or sell their respective shares at their own discretion.

(19)That the entire project shall be completed as far as possible within a period of two years from the date of release of sanctioned plan for construction of multi storeyed complex by ADA, Allahabad or 2 years from the date of handing over vacant physical possession by the land owners to the builder whichever is later. However any period, during which the builder shall not be entitled/or unable to raise construction under unforeseen circumstances like restrain order by court etc. shall not be taken in account for calculating the aforesaid period of two years. It is further agreed that in case the builder fails to complete the project for any reason within the aforesaid period of two years, then the builder shall be liable to pay to the landowners damages at the rate of Rs. 25,000/- per month for the period of delay. That similarly, if the owners fail to handover vacant possession of the plot within the agreed period of one month from the date of sanction of map or 30th November 2014 whichever is later, then in that case the owners shall pay an interest at the rate of 1.5 % per month on the refundable deposit amount i.e. ₹ 5 crores to the builder as damages up to the date of the possession.

(30)That in case of any dispute arising between the parties hereto pertaining to the terms and conditions of this MOU the same shall be referred to sole arbitrator to be appointed jointly with mutual consent and the decision of the arbitrator shall be final and binding on the parties hereto. The provision of Arbitration Act, 1996 shall be fully applicable to such Arbitration proceedings.

(33)That the expenses of this MOU including payment of Stamp duty and Registration fees etc. shall be borne by the builder only.

40. The Apex Court in the case of ***Yellapu Uma Maheshwari and another vs. Buddha Jagadheeswararao and others (2015) 16 SCC 787***, while analysing Section 17 and 49 of the Registration Act,1908, has held that a document which has the effect of creating and taking away the rights in respect of an immovable property, is compulsorily registrable and if not registered, is not admissible in evidence, however, it can be relied upon for collateral purpose, subject to payment of stamp duty, penalty, proof and relevancy.

41. The Apex Court in the case of ***Sita Ram Bhama vs Ramvatar Bhama (2018) 15 SCC 130***, held as under:-

> *10. The only question which needs to be considered in the present case is as to whether document dated 9-9-1994 could have been accepted by the trial court in evidence or the trial court has rightly held the said document inadmissible. The plaintiff claimed the document dated 9-9-1994 as memorandum of family settlement. The plaintiff's case is that earlier partition took place in the lifetime of the father of the parties on 25-10-1992 which was recorded as memorandum of family settlement on 9-9-1994. There are more than one reasons due to which we are of the view that the document dated 9-9-1994 was not mere memorandum of family settlement, rather a family settlement itself. Firstly, on 25-10-1992, the father of the parties was himself owner of both, the residence and shop being self-acquired properties of Devi Dutt Verma. The High Court has rightly held that the said document cannot be said to be a will, so that the father could have made the will in favour of his two sons, the plaintiff and the defendant. Neither the plaintiff nor the defendant had any share in the property on the day when it is said to have been partitioned by Devi Dutt Verma. Devi Dutt Verma died on 10-9-1993. After his death, the plaintiff, the defendant and their mother as well as sisters become the legal heirs under the Hindu Succession Act, 1956 inheriting the property being a Class I heir. The document dated 9-9-1994 divided the*

entire property between the plaintiff and the defendant which document is also claimed to be signed by their mother as well as the sisters. ***In any view of the matter, there is relinquishment of the rights of other heirs of the properties, hence, the courts below are right in their conclusion that there being relinquishment, the document dated 9-9-1994 was compulsorily registrable under Section 17 of the Registration Act.***

* * *

12. We are, thus, in full agreement with the view taken by the trial court as well as the High Court that the document dated 9-9-1994 was compulsorily registrable. The document also being not stamped could not have been accepted in evidence and the order of the trial court allowing the application under Order 13 Rule 3 CPC and the reasons given by the trial court in allowing the application of the defendant holding the document as inadmissible cannot be faulted.

13. There is only one aspect of the matter which needs consideration i.e. whether the document dated 9-9-1994, which was inadmissible in evidence, could have been used for any collateral purpose. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. Further, an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. A two-Judge Bench judgment of this Court in Yellapu Uma Maheswari v. Buddha Jagadheeswararao (2015) 16 SCC 787 is appropriate. In the above case also, admissibility of documents, Ext. B-21 dated 5-6-1975 a deed of memorandum and Ext. B-22 dated 4-6-1975 being an agreement between one late Mahalakshamma, Respondent 1-plaintiff and Appellant 1-defendant came for consideration. Objection was taken regarding

admissibility which was upheld both by the High Court [Yellapu Uma Maheswari v. Buddha Jagadheeswara Rao, 2013 SCC OnLine AP 766] and trial court. Matter was taken up by this Court. In the above case, this Court held that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents. This Court after considering both the documents, B-21 and B-22 held that they require registration. In para 15, the following was held: (SCC p. 794)

"15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition."

14. After holding the said documents as inadmissible, this Court in Yellapu Uma Maheswari case further proceeded to consider the question as to whether the documents B-21 and B-22 can be used for any collateral purpose. In the above context, the Court

accepted the submission of the appellant that the documents can be looked into for collateral purpose provided the appellant-defendant to pay the stamp duty together with penalty and get the document impounded. In paras 16 and 17, the following has been laid down: (SCC p. 794)

"16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy [Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy, 1967 SCC OnLine AP 4 : AIR 1969 AP 242] has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant-defendant want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark Exts. B-21 and B-22 for collateral purpose subject to proof and relevance.

17. Accordingly, the civil appeal is partly allowed holding that Exts. B-21 and B-22 are admissible in evidence for collateral purpose subject to payment of stamp duty, penalty, proof and relevancy."

15. Following the law laid down by this Court in the above case, we are of the opinion that the document dated 9-9-1994 may be admissible in evidence for collateral purpose provided the

appellant gets the document impounded and to pay the stamp duty together with penalty as has been directed in the above case.

42. Similarly, The High Court of Bombay in the case of ***Salim Baig vs Sayyad Nawid 2025 SCC OnLine Bom 2819***, held as under:-

17. The Hon'ble Supreme Court of India in case of Avinash Kumar Chauhan v. Vijay Krishna Mishra, AIR 2009 SCW 979, observed that where possession of property has been transferred under any instrument, in absence of payment of stamp duty, such instrument cannot be admitted even for collateral purpose or to corroborate oral evidence. There is total and absolute bar as to admission of unstamped instrument, unless there is compliance with requirements of provisos to Section 35.

18. In this background, if unstamped instrument is admitted even for collateral purpose, it would amount to receiving such document in evidence for a purpose which is prohibited under Section 35 of Stamp Act. The bar against admissibility of instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of purpose, be it for main or collateral purpose, unless requirements of proviso (A) to Section 35 are complied with.

19. The similar issue was considered by High Court of Karnataka in case of Smt. Dyavamma Alias Sanna Mukkamma v. Smt. Balamma, ILR 2010 Kar 3280, that instruments which are not duly stamped are not only inadmissible in evidence, but the Court cannot act upon it, or consider the same for any relief like temporary injunction till such time both duty and penalty are paid. In case of Yellapu Uma Maheswari v. Buddha Jagadheeswararao, (2015) 16 SCC 787, the Hon'ble Supreme Court observed that if party wanted to rely upon document for collateral purpose, it was upon for him to pay stamp duty together with penalty and get document impounded.

43. The Apex Court in the case of ***Ameer Minhaj vs.Dierdre Elizabeth(Wright) Issar and others (2018) 7 SCC 639(By 3 Judges)***, while analysing Section 17(1-A) of the Registration Act,1908, held as under :-

> *9. In other words, the core issue to be answered in the present appeal is whether the suit agreement dated 9-7-2003, on the basis of which relief of specific performance has been claimed, could be received as evidence as it is not a registered document. Section 17(1-A) of the 1908 Act came into force with effect from 24-9-2001. Whereas, the suit agreement was executed subsequently on 9-7-2003. Section 17(1-A) of the 1908 Act reads thus:*
>
> *"**17. Documents of which registration is compulsory**.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act 16 of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871) or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely—*
>
> * * *
>
> *(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A."*
>
> *10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered , if the party wants to rely on the same for the*

purposes of Section 53-A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53-A of the 1882 Act. The issue, in our opinion, is no more res integra. In S. Kaladevi v. V.R. Somasundaram [S. Kaladevi v. V.R. Somasundaram, (2010) 5 SCC 401 : (2010) 2 SCC (Civ) 424] this Court has restated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.

11. Section 49 of the 1908 Act reads thus:

"49. Effect of non-registration of documents required to be registered.—No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

> *12. In the reported decision, this Court has adverted to the principles delineated in K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd. [K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd., (2008) 8 SCC 564] and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment [Dierdre Elizabeth (Wright) Issar v. Ameer Minhaj, 2016 SCC OnLine Mad 31541] that the sale agreement dated 9-7-2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53-A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the trial court after the parties adduce oral and documentary evidence.*

44. It is apparent from the above terms and conditions of the alleged MOU, that in the disputed land and the proposed superstructure to be constructed on it, the land owners have agreed to create 42% ownership of the plaintiffs, meaning thereby that the land owners have relinquished their 42% ownership in the disputed land. It is apparent that the alleged MOU is creating ownership rights in favour of the plaintiffs and extinguishing ownership rights of the land owners in the disputed land, as such, the alleged MOU should be duly stamped as per the provisions of Stamp Act, and should also be registered as per Section 17 of the Registration Act, in order to become a legally enforceable agreement so as to vest, any right, title and interest in the plaintiffs in the disputed land. It is further apparent that the

plaintiffs are claiming rights in the disputed land only on the basis of the alleged MOU but due to non payment of proper stamp duty and non-registration, it is not a legally enforceable document. Even the Constitution Bench of the Apex Court in the case of ***The interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*** (supra) has held such agreement to be inadmissible in evidence. It is apparent that if the MOU is inadmissible in evidence then how any relief can be granted to the plaintiffs on the basis of this MOU, when the defect of non-payment of stamp duty and non-registration has not been cured by the plaintiffs.

45. It is further apparent that even the clause 33 of the MOU mandates that the Stamp duty and Registration fees of the MOU is to be borne by the builder, which itself shows that it was in the contemplation of the parties, that the MOU requires payment of stamp duty and it also requires registration, so as to become a legally enforceable document.

46. In view of the above facts and the legal position, the alleged MOU does not create any legally enforceable right in favour of the plaintiffs, insofar as the disputed land is concerned.

Relief of specific performance of MOU or declaration regarding its enforceability not claimed by the plaintiffs. In such situation, whether the suit is barred by Section 41(h) of the Specific Relief Act

47. The Apex Court in the case of ***Anathula Sudhakar versus P. Buchi Reddy(Dead) by Lrs. and others (2008)4 SCC 594***, while discussing the general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and /or possession with injunction as a consequential relief, held as under:-

> *13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.*
>
> *13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the*

defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a

wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

15. In a suit for permanent injunction to restrain the defendant from interfering with the plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and the defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.

16. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title

> *as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.*

48. It is apparent that the case of the plaintiffs is based on the alleged MOU, the execution of which, has not been admitted by the landowner/defendants, which is also not duly stamped and unregistered, which does not confer any right, title and interest in the disputed land on the plaintiffs. The plaintiffs have also not sought the relief of specific performance of MOU.It is well settled that in order to claim any right, title and interest in the disputed land, the plaintiffs have to seek declaration of their rights on the basis of the alleged MOU, and only thereafter, the relief of permanent injunction can be granted to them. Unless and until, a declaration is not made regarding the legality and enforceability of the MOU on the landowners, the relief of permanent injunction cannot be granted to them against the defendant no.1 and 2, who are the real owners of the disputed land, whose ownership of the disputed land is unequivocally admitted to the plaintiffs.

49. It is also well-settled that when remedy of a suit for specific performance is available to the plaintiff, he cannot file a suit for injunction simplicitor nor he can claim temporary injunction in pending suit for injunction simplicitor in view of Section 41(h) of the Specific Relief Act.

50. A Division Bench of this Court in the case of ***Vinod Kumar and others vs. Sudha Land Ventures and Homes Pvt.Ltd. 2015 SCC OnLine All 8778*** has also considered the issue whether on the basis of unregistered agreement to sell, temporary interim injunction can be granted to the plaintiff under

Order 39 Rule 1 CPC. The relevant paragraphs of the above judgment read as under:-

> *14. In the case of K.B. Saha and Sons Pvt. Ltd. v. Development Consultant Ltd., [2008 (72) ALR 638 (SC).] the Hon'ble Apex Court noticed following facts as stated by Mulla in his Indian Registration Act, 7th Edition, at page 189.*
>
> *"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu and Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it."*
>
> *15. The Apex Court culled out the following principles:*
>
> *1. "A document required to be registered is not admissible into evidence under section 49 of the Registration Act.*
>
> *2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to section 49 of the Registration Act.*
>
> *3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*
>
> *4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.*
>
> *5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."*

16. The word, "collateral transaction" has been interpreted as transaction in itself not required to be effected by a registered document, i.e., a transaction creating any right, title or interest in immovable property of the value of Rs. 100/- and onwards.

17. Learned Counsel for the respondent contends that even if the two sale-deeds were not registered, but they should certainly be looked into for collateral purpose and a bare perusal of two sale-deeds reveals that on 21.2.2014 and 22.2.2014, the respondent/plaintiff was put on possession of plots in suit and in view of above, learned Counsel tried to justify the impugned order.

18. This proposition is correct that if a document is invariably registrable and has not been registered, it will be admissible in evidence only for collateral purposes but collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguish the right to immovable property. If the document is unregistered then it could not be used for showing that it created, declared, assigned or extinguish a right to immovable property. The term collateral purpose could not permit the party to establish any of these acts from the deed.

19. In our opinion, the contention that it could be used for collateral purpose for delivery of possession does not support the case of the plaintiff-respondent at all because by way of State Amendment in Order XXXIX, Rule 2, Sub Rule (2) proviso (a), C.P.C., a bar has been created w.e.f. 1.2.1977.

20. In Rule 2, in sub-rule (2), the following proviso has been added by State Amendment:

"Provided that no such injunction shall be granted—

(a) where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963."

21. A bare perusal of Order XXXIX, Rule 2, Sub Rule (2) proviso (a), C.P.C., reveals that temporary injunction shall not be granted where no perpetual injunction could be granted in view of provisions of sections 38 and 41 of Specific Relief Act, 1963.

22. Section 38 of Specific Relief Act deals with provisions when temporary injunctions can be granted and section 41 deals with provisions when injunction can be refused.

23. Provisions of section 41 of Specific Relief Act is as under:

41. Injunction when refused.-An injunction cannot be granted—

"(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any Legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court;

(j) when the plaintiff has no personal interest in the matter."

24. A perusal of provisions of section 41(h) of Specific Relief Act reveals that when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust, then there is no ground to grant injunction.

51. It is apparent from the plaint averments that there is a real apprehension on the part of the plaintiffs that the land owners will not comply with the terms and conditions of the alleged MOU and instead, they have entered into a builder agreement with defendant no. 3 to construct flats on the disputed land, and if, the defendants succeed in doing so, then the plaintiffs would be put to serious irreparable loss which cannot be compensated in any manner whatsoever because they have invested a lot of money in obtaining the requisite permissions from the concerned authorities, on advertisments for marketing of the proposed flats, etc. It is apparent that the plaintiffs have not sought the relief of specific performance of MOU, which they ought to have claimed in the suit, as such, in view of the settled legal position, since an equally efficacious remedy is available to the plaintiffs in the form of suit of specific performance of MOU, no injunction simplicitor can be granted in their favour, since the suit claiming only the relief of permanent injunction is barred by Section 41(h) of the Specific Relief Act.

Possession of the disputed land

52. Although the plaintiffs claim that as per the terms and conditions of the MOU, the possession of the disputed land was handed to them, for undertaking construction on it, but the defendants have denied this.

53. Clause 8 of the MOU reads as under:-

"8. That the owners shall hand over the said land in vacant possession to the builder only for the purpose of construction of multi storeyed building in terms of this MOU and as per map sanctioned by ADA, Allahabad within one month from the sanction of the map or latest by 15th of November, whichever is later. It is specifically understood between the parties to this MOU that such handing over of the site by the landowners to the

builder is merely a license to commence the construction activity and does not in any manner whatsoever, confer any right title or interest of any sort in favour of the builder."

54. It is apparent from the above clause that at the most license has been granted to the plaintiffs to commence the construction activity on the disputed land, which does not lend credence to the averment of the plaintiffs that possession of the disputed land has been handed to them by the landowners.

Whether due to arbitration clause in the MOU, the jurisdiction of the civil court was barred

55. As discussed hereinbefore there is an arbitration clause in para-30 of the alleged MOU, which mandated that in case of dispute between the terms and conditions of the MOU, the same were required to be referred to a sole arbitrator, which was to be appointed with the mutual consent of the parties, and the provisions of Arbitration and Conciliation Act, 1996 were made applicable to such arbitration proceedings.

56. The trial court in the impugned order has held that in view of the above arbitration clause, the jurisdiction of the court was barred, but it has not rejected the plaint. The question arises that whether the above conclusion of the trial court is legally sustainable?

57. The Apex Court in the case of ***ITI Ltd. vs. Siemens Public Communications Network Ltd.(2002)5 SCC 510*****,** while analysing whether there is express prohibition against the application of the Civil Procedure Code to a proceeding arising out of the Arbitration and Conciliation Act 1996, held as under:-

9. But Mr Parasaran contended that the said order is based on an earlier reported judgment of this Court in the case of Shyam Sunder Agarwal & Co. v. Union of India [(1996) 2 SCC 132] . According to Mr Parasaran, the Court in the case of Nirma Ltd. [(2002) 5 SCC 520] has erroneously founded its conclusion on the said judgment in Shyam Sunder Agarwal case. Learned counsel argued that the case of Shyam Sunder Agarwal arose

under the Arbitration Act, 1940, which Act had made the provisions of the Code specifically applicable to the proceedings arising under the said Act in the civil court whereas in the present Act such provision making the Code applicable is not found. Therefore, there is a substantial difference in law between the cases of Shyam Sunder Agarwal and Nirma Ltd. Therefore, the order of this Court in Nirma Ltd. is not a good law, hence, requires reconsideration.

10. We do not agree with this submission of the learned counsel. It is true in the present Act application of the Code is not specifically provided for but what is to be noted is: is there an express prohibition against the application of the Code to a proceeding arising out of the Act before a civil court? We find no such specific exclusion of the Code in the present Act. When there is no express exclusion, we cannot by inference hold that the Code is not applicable.

11. It has been held by this Court in more than one case that the jurisdiction of the civil court to which a right to decide a lis between the parties has been conferred can only be taken by a statute in specific terms and such exclusion of right cannot be easily inferred because there is always a strong presumption that the civil courts have the jurisdiction to decide all questions of civil nature, therefore, if at all there has to be an inference the same should be in favour of the jurisdiction of the court rather than the exclusion of such jurisdiction and there being no such exclusion of the Code in specific terms except to the extent stated in Section 37(2), we cannot draw an inference that merely because the Act has not provided CPC to be applicable, by inference it should be held that the Code is inapplicable. This general principle apart, this issue is now settled by the judgment of a three-Judge Bench of this Court in the case of Bhatia International v. Bulk Trading S.A. [(2002) 4 SCC 105] wherein

while dealing with a similar argument arising out of the present Act, this Court held: (SCC p. 116, para 15)

"While examining a particular provision of a statute to find out whether the jurisdiction of a court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the court arrives at the same when such a conclusion is the only conclusion."

12. In the said view of the matter, we are in respectful agreement with the view expressed by this Court in the case of Nirma Ltd. and reject the argument of Mr Parasaran on this question.

58. The Apex Court in the case of ***Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd.(2011)5 SCC 532,*** while analysing when a dispute can be referred to an arbitrator held as under :-

18. In SBP & Co. v. Patel Engg. Ltd. [(2005) 8 SCC 618] this Court held thus: (SCC p. 649, para 19)

"19. ... When the defendant to an action before a judicial authority raises the plea that there is an arbitration agreement and the subject-matter of the claim is covered by the agreement and the plaintiff or the person who has approached the judicial authority for relief, disputes the same, the judicial authority, in the absence of any restriction in the Act, has necessarily to decide whether, in fact, there is in existence a valid arbitration agreement and whether the dispute that is sought to be raised before it, is covered by the arbitration clause. It is difficult to contemplate that the judicial authority has also to act mechanically or has merely to see the original arbitration agreement produced before it, and mechanically refer the parties to an arbitration."

19. Where a suit is filed by one of the parties to an arbitration agreement against the other parties to the arbitration agreement, and if the defendants file an application under

Section 8 stating that the parties should be referred to arbitration, the court (judicial authority) will have to decide:

(i) whether there is an arbitration agreement among the parties;

(ii) whether all the parties to the suit are parties to the arbitration agreement;

(iii) whether the disputes which are the subject-matter of the suit fall within the scope of arbitration agreement;

(iv) whether the defendant had applied under Section 8 of the Act before submitting his first statement on the substance of the dispute; and

(v) whether the reliefs sought in the suit are those that can be adjudicated and granted in an arbitration.

59. The High Court of Bombay in the case of ***Gitarani Maity vs Krishna Chakraborty and Ors. 2025 SCC OnLine Cal 2462***, held as under:-

12. A bare perusal of the said Section 8 clearly shows that a judicial authority can only refer the matter to arbitration in view of the existence of an arbitration agreement/clause if the party seeking such reference applies for such reference not later than the date of submitting his first written statement on the substance of the dispute. The first statement on the substance of the dispute in case of a civil suit is, without doubt, the written statement filed by the defendant.

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21. Section 8 of the 1996 Act contemplates a reference to arbitration of a dispute regarding which there is an arbitration clause and does not operate as a bar to the civil court's jurisdiction as such. Even if a reference is made to the arbitrator, the civil court does not lose the subject jurisdiction.

22. It is only by operation of Section 8 of the 1996 Act that the civil court has to refer the matter to arbitration.

> *23. Moreover, the provision of Section 8 of the 1996 Act contemplates a bar, if at all, which can be waived by the parties. A bar which can be waived by parties is not an absolute bar on the jurisdiction of the civil court coming within the connotation of "express or implied bar" as contemplated in Section 9 of the Code of Civil Procedure.*
>
> *24. In the event no application for reference to arbitration under Section 8 of the 1996 Act is made by either party, the civil court may very well entertain the suit and proceed with the adjudication of the same on merits in accordance with law.*
>
> *25. Hence, we do not find that the existence of an arbitration clause in the concerned agreement between the parties operates per se as a bar to the jurisdiction of the civil court. Thus, the objection taken in paragraph no. 12 of the written statement in the present case, regarding the civil court not having jurisdiction even to entertain the suit and seeking dismissal of the suit on such ground, cannot be at par with an application seeking reference to arbitration under Section 8 of the 1996 Act. The two operate at different levels.*
>
> *26. Hence, we cannot, under any stretch of imagination, equate such an objection taken in the written statement as to jurisdiction, seeking dismissal of the suit, with an application to refer the matter to arbitration.*

60. In the instant case, it is apparent that the defendant landowners have in their written statement altogether denied the execution of alleged MOU, which contains the arbitration clause. It is further apparent that they have not moved any application under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the matter to an arbitrator, meaning thereby, that they have waived their right to invoke the arbitration clause and have submitted themselves to the jurisdiction of the Court. It is apparent that ouster of jurisdiction of Civil Court is contingent upon moving application under Section 8 of the Arbitration and Conciliation Act, 1996. Until such formal

invocation under Section 8, merely because the underlying MOU contains an arbitration clause, neither the plaint can be rejected nor the parties be referred for arbitration. It is further pertinent to mention here that inspite of invocation of the arbitration clause, the Court has to examine whether the dispute falls within the scope of arbitration agreement? If not, then inspite of the arbitration clause, the matter cannot be referred to arbitrator.

61. It is not disputed by the parties that no such application under Section 8 of the Act of 1996 was moved by the defendant landowners before the trial court, as such, merely on the basis that the alleged MOU contained an arbitration clause, the trial court could not have concluded that prima-facie it has no jurisdiction to decide the suit. It is apparent that the suit was not barred by any law. This finding of the trial court is perverse, but it does not affect the final outcome.

Relief of ad interim injunction

62. The Apex Court in the case of ***Padhiyar Prahladji Chenaji (Deceased) Thr. LRS. vs. Maniben Jagmalbhai (Deceased) Thr. LRS. And others (2022) 12 SCC 128***, held as under:-

> *18. Even otherwise on merits also, the courts below have erred in passing the decree of permanent injunction restraining Defendant 1 from disturbing the alleged possession of the plaintiff. Assuming for the sake of argument that the plaintiff is found to be in possession, in that case also, once the plaintiff has lost so far as the relief of declaration and title is concerned and Defendant 1 is held to be the true and absolute owner of the property in question, pursuant to the execution of the sale deed dated 17-6-1975 in his favour, the true owner cannot be restrained by way of an injunction against him. In a given case, the plaintiff may succeed in getting the injunction even by filing a simple suit for permanent injunction in a case where there is a cloud on the title. However, once the dispute with respect to title is settled and it is held against the plaintiff, in that case, the suit by the plaintiff for permanent injunction shall not be*

> *maintainable against the true owner. In such a situation, it will not be open for the plaintiff to contend that though he/she has lost the case so far as the title dispute is concerned, the defendant — the true owner still be restrained from disturbing his/her possession and his/her possession be protected.*

63. It is apparent that neither the plaintiffs have any right, title or interest in the disputed land nor they are in possession, as such, no injunction can be granted to them against the true owners (defendant no.1 and 2) of the disputed land. It is also apparent that there is an arbitration clause in the MOU, but the landowner/defendants do not want to invoke it, so as to enable the court to refer the parties to settle their disputes through arbitration. It is also apparent that the plaintiffs could have also, before filing the instant suit, availed the remedy of arbitration for settling the disputes, but they have also not availed this remedy.

64. It is further apparent that on the basis of the alleged MOU, which is neither duly stamped nor registered, which is inadmissible in evidence, the plaintiffs cannot get any relief from the court, so long as the defect is not cured. It is also evident that the MOU contains penal clause which mandates that on default of landowners to handover the vacant possession of the disputed land within the stipulated time period, they are liable for payment of interest at the rate of 1.5% per month on the refundable deposit of ₹ 5 crores. It is well-settled that relief of injunction is discretionary. It is a disputed fact whether the amount returned by the landowners was towards the repayment of personal loan taken by them or whether it was the money, which was taken earlier in pursuance of the alleged MOU from the plaintiffs.

65. It is further apparent that the plaintiffs can also claim monetary compensation/damages for alleged breach of contract on the part of the land owners in not complying with the terms and conditions of the alleged MOU, which is also apparent from the above mentioned penal clauses incorporated in it. It is well settled that if a party can be adequately compensated in terms of money, then he is not entitled to get the discretionary relief of injunction.

When the Appellate Court can interfere in these matters

66. The Apex Court in the case of ***Wander Ltd. and another vs. Antox India Pvt. Ltd. 1990 Supp SCC 727***, while discussing the scope of interference by the appellate courts while hearing appeals against injunction orders passed by the trial court, held 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. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)*
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> *"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is*

due only to the application of well settled principles in an individual case'."

67. The Apex Court in the case of ***Ramakant Ambalal Choksi vs. Harish Ambalal Choksi and others 2024 INSC 913***, has analysed the principles regarding grant of injunction and interference by the appellate court in the discretion exercised by the trial court. The relevant paragraphs read as under:-

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 [Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan, (2013) 9 SCC 221 : (2013) 4 SCC (Civ) 285] , 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. "

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 .

32. In Anand Prasad Agarwalla v. Tarkeshwar Prasad [Anand Prasad Agarwalla v. Tarkeshwar Prasad, (2001) 5 SCC 568] , it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.

33. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent

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. (See Dalpat Kumar v. Prahlad Singh [Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719] .)

34. Any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [Moffett v. Gough, (1878) 1 LR Ir 331] , the Court observed that a perverse verdict may probably be defined as one that is not only against the

weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [Godfrey v. Godfrey, 106 NW 814 : 127 Wis 47 (1906)] , the Court defined "perverse" as "turned the wrong way"; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

35. The expression "perverse" has been defined by various dictionaries in the following manner:

(a) Oxford Advanced Learner's Dictionary of Current English, 6th Edn.

Perverse — Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

(b) Longman Dictionary of Contemporary English — International Edn.

Perverse — Deliberately departing from what is normal and reasonable.

(c) The New Oxford Dictionary of English — 1998 Edn.

Perverse — Law (of a verdict) against the weight of evidence or the direction of the Judge on a point of law.

(d) New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)

Perverse — Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

(e) Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.

Perverse — A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

36. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures

> *and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See Damodar Lal v. Sohan Devi [Damodar Lal v. Sohan Devi, (2016) 3 SCC 78 : (2016) 2 SCC (Civ) 36] .)*
>
> *37. Seen in light of the aforesaid settled position of law, we are of the clear view that in the facts of the present case, the High Court overstepped its appellate jurisdiction under Order 43CPC and substituted its own view for the one taken by the trial court without giving any categorical finding as to why the order of the trial court could be said to suffer from any perversity, capriciousness, arbitrariness, mala fides or having been passed in ignorance of the settled principles governing the grant of injunction under Order 39CPC.*

68. It is apparent from the above law laid down by the Apex Court in ***Wander Ltd*** (supra) and ***Ramakant Ambalal Choksi*** (supra) that the Appellate Court while hearing appeals against the order of the trial court granting or refusing injunction can only interfere where the impugned order is malafide, capricious, arbitrary or perverse. If the view taken by the trial court was a possible view, the Appellate Court was not supposed to substitute its view. It is further apparent that if as per the reasonable man, the conclusion reached by the trial court on facts was possible, there is no perversity. If not, the finding is perverse. It was further held by the Apex Court that inadequacy of evidence or a different reading of evidence is not perversity.

69. From the analysis made hereinbefore, it is apparent that, the trial court has not erred in concluding that the alleged MOU has not been executed by all the landowners, as such, no relief can be claimed on its basis against those landowners who have not executed it.

70. It is further apparent that the trial court has not erred in concluding that since the MOU was unstamped and unregistered, it was inadmissible in evidence and further, it does not confer any right, title and interest in the disputed land in the plaintiffs, on the basis of which no enforceable legal right accrues to them.

71. It is further apparent that the trial court has rightly concluded that neither the title nor the possession of the disputed land vests in the plaintiffs, as such, the relief of injunction cannot be granted to them against the true owners.

72. It is further apparent that the trial court has rightly concluded that the plaintiffs have not claimed the specific performance of the alleged MOU, whereas in reality, they are enforcing it in the garb of the suit for the relief of permanent injunction.

73. It is further apparent that the trial court has correctly concluded that the question of return of money by landowners is a disputed question of fact which can only be decided after evidence but prima-facie the trial court was of the opinion, that keeping in view the admission of the plaintiffs in their rejoinder affidavit, the land owners have returned substantial money to the plaintiffs.

74. It is true that the trial court has recorded a perverse finding that prima-facie it has no jurisdiction to hear and decide the suit, keeping in view the arbitration clause in the alleged MOU, but the trial court in pursuance of the above finding has not rejected the plaint, as such, the above perverse finding does not materially affect the outcome. It would have been different, if the trial court after recording the above finding regarding lack of jurisdiction, had rejected the plaint. From the perusal of the record of the trial court, it is further apparent that it has framed five issues on 8.1.2021 on the basis of pleadings of the parties, which does not contain any issue regarding the non-maintainability of the suit, on the ground of being barred by the provisions of the Arbitration and Conciliation Act 1996. This fact amply proves that the trial court has only made a passing reference that the suit was prima-facie

barred by the provisions of Act of 1996, which was neither pleaded nor pressed by the defendant landowners.

75. For the aforesaid reasons, this Court is of the opinion that there is no perversity in the impugned order of the trial court. The view taken by the trial court is a possible view, which is in accordance with the evidence on record and prevailing law, which cannot in any manner whatsoever be termed capricious, arbitrary or malafide, as such, keeping in view the parameters of interference laid down by the Apex Court in ***Wander Ltd*** (supra) and ***Ramakant Ambalal Choksi*** (supra), this Court while exercising its appellate jurisdiction cannot interfere in the impugned order and substitute its own view. The trial court has rightly concluded that the plaintiffs have failed to prove the prima-facie case and the balance of convenience is also not in their favour. It is apparent that for alleged breach of contract the plaintiffs can file suit for damages against the landowners in which they can be adequately compensated with money, as such, if the discretionary relief of injunction is not granted to them, they shall also not suffer any irreparable injury.

76. **Accordingly, the instant appeal has got no merit and is hereby dismissed with costs**. Consequently, the impugned order dated 13.3.2020 of the trial court in O.S.no. 342 of 2019 is affirmed.

77. A Division Bench of his Court vide order dated 26.6.2020 passed in this appeal had directed the parties to maintain status quo with respect to the disputed property. Since the appeal has been dismissed on merits, hence, **the interim order dated 26.6.2020 also stands vacated**.

78. The trial court is directed to decide the instant suit preferably within a period of six months from the date a certified copy of this order is produced before it, without affording unnecessary adjournment to either of the party, on merits, in accordance with law.

79. The observations made by this Court in the instant order are only for the purpose of deciding this appeal and the trial court will not be influenced and bound by it, and is at liberty to form its own opinion, on the basis of

pleadings and evidence adduced by the parties during trial, in accordance with law.

80. Office is directed to send back the original trial court record, forthwith.

Order Date: 22.01.2026
Jitendra/Himanshu/Mayank

(Sandeep Jain, J.)