

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

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

F.M.A. No. 929 of 2023

with

CAN 1 of 2023

And

CAN 2 of 2024

**Shree Shree Iswar Sitaram Jew & Anr.
Vs.
Subhodeep Ganguly & Ors.**

For the appellants : Mr. Shaktinath Mukherjee Sr. Adv.,
Mr. Rudrodeb Chaudhury,
Mr. Rahul Karmakar,
Mr. Subhrojyoti Mukhoorji
Ms. Antara Biswas,
Ms. Saolini Bose

For the respondent nos. 1 and 4 : Mr. Arindam Banerjee, Sr. Adv.,
Mr. Pranit Bag,
Mr Raja Baliyal,
Mr. Rajarshi Ganguly,
Mr. Anusko Das,
Mr. Vidhya Bhuban Upadhayay

For the respondent no.2 : Mr. Aniruddha Chatterjee, Sr. Adv
Mr. Debabata Roy,
Mr. Oishik chatterjee

For the respondent no.3 : Mr. Kushal Chatterjee,
Mr. Ankit Chatterjee

Hearing concluded on : 17.02.2025

Judgment on : 03.03.2025

Sabyasachi Bhattacharyya, J.:-

1. By virtue of a previous order, the appeal was directed to be heard along with the applications and is now taken up for hearing.

2. The present first miscellaneous appeal arises out of an order refusing to grant *ad interim* injunction in favour of the plaintiffs/appellants.
3. The genesis of the litigation is a suit bearing Title Suit No. 910 of 2023 filed by the plaintiffs/appellants before the Tenth Court of learned Civil Judge (Senior Division) at Alipore *inter alia* for declaration that a deed of sale dated July 2, 2015 executed by one Ruby Ganguly (since deceased) in favour of defendants/respondents no.4 is not binding on the deity, that is, appellant no.1 Shree Shree Iswar Sitaram Jew, for a decree for refund of the amount of Rs.1,75,00,000-/ received by the said Ruby Ganguly to the plaintiffs and for permanent injunction restraining the defendant no. 1 to 4 from giving effect to the impugned deed of conveyance as well as from transferring the suit property and also for a decree for cancellation of the impugned deed for conveyance dated July 2, 2015.
4. In the said suit, an application for temporary and *ad interim* injunction was filed restraining the defendants/respondents from giving effect to the impugned deed and from transferring the suit property on the strength of the same.
5. Learned senior counsel appearing for the appellants argues that Ruby executed the sale deed by claiming herself to be the sole Shebait of the appellant no.1-deity, although there are other shebait of the deity, on the basis of misrepresentation of facts.
6. Before effecting the transfer, an order was obtained by Ruby, also posing to be the sole shebait, from the concerned District Court under Section 34 of the Indian Trusts Act, 1882. It is submitted that under

the savings clause of Section 1 of the Trusts Act, public or private religious or charitable endowments have been kept outside the purview of the said Act. As such, Section 34 of the Act is not applicable and the order granting permission to transfer was a nullity, thus vitiating the transfer itself.

7. Also, the sale was invalid and not binding on the deity, having been executed by merely one of the shebait in the absence of the others.
8. The sale, it is further argued, was grossly undervalued, being for a consideration of Rs.1.75 Crore, whereas the market value of the property as per the registration value, is to the tune of Rs.97 Crore.
9. Moreover, the learned Trial Judge proceeded on the premise that no injunction could be granted by operation of the '*lis pendens*' principle. Learned senior counsel cites *Sm. Muktakesi Dawn and Others vs. Haripada Mazumdar and another* reported at AIR 1988 CAL 25 to argue that *lis pendens* is not a bar for grant of injunction to prevent unnecessary multiplicity and complications. Learned senior counsel cites a judgment of the Privy Council reported at (LVII) LW 1 (*Bhabatarini Debi vs. Ashalata Debi and Others*) to argue that the endowment, on the death of the founder, should revert back to the estate of the deceased founder. Learned senior counsel also relies on the Fifth Edition of the "Hindu Law to Religious and Charitable Trusts" by Tagore Law Lectures to argue that the remedies for enforcement of a charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust and in English Law, the Crown, as *parens patriae*, is a constitutional protector of all property subject to

charitable trusts, such trusts being essentially matters of public concern. Thus, it is argued that even a worshipper of a deity can file a suit in case of mismanagement and/or misappropriation of the debuttar property vested in the idol.

- 10.** Learned senior counsel next cites *Vyalikaval Housebuilding Coop Society, by its Secretary v. V.Chandrappa and Others* reported at (2007) 9 SCC 304 for the proposition that if a transaction is vitiated by *mala fides* and fraud, such ground can be set up at any time before any forum and the delay in preferring the same is condonable.
- 11.** It is thus argued that the suit is very much maintainable at the behest of the deity, represented by one of the shebait, who has a right as a shebait in terms of the genealogical table furnished by the appellants, which is, in principle, not disputed by the respondent.
- 12.** The decision in *Bhabatarini Debi (supra)*, it may be noted, was rendered in the context of the present debuttar estate.
- 13.** Learned senior counsel appearing for the respondent no.2 argues that the cause of action of the suit arose, even as per paragraph 32 of the plaint, in the year 2019 and as such, the suit is barred by limitation. Moreover, no *ad interim* order was sought or obtained at any stage during pendency of the present appeal and, thus, there is no urgency to grant injunction at the *ad interim* stage.
- 14.** Secondly, it is argued that the suit property is not a part of the Arpannama granted by the original settlor in the year 1922, which vested certain properties in the deity/appellant no.1 and formed the

debuttar estate, which is borne out by a comparison of the schedule of the Arpannama and that of the suit property.

- 15.** Thirdly, since the impugned sale deed was executed and registered in the year 2015, a challenge to the same in the year 2023 is, in any event, time-barred since the date of registration should be deemed to be the date of knowledge of the plaintiffs in respect of the sale.
- 16.** It is further argued that the suit is barred by non-joinder of the other shebait, who are also necessary parties to the litigation.
- 17.** Fourthly, the plaintiffs have made an application seeking recall of the order passed by the learned District Judge under Section 34 of the Trusts Act and has taken adjournment therein. The said application is still pending. Thus, the said order still stands and forms the basis of the impugned transfer. The plaintiffs have also filed a suit in this Court challenging the defendant's shebaitship, which is also *sub-judice*.
- 18.** In the present suit, it is argued, no relief of the declaration of the plaintiff no.2's shebaitship has been sought, although disputed, and as such, the suit is not maintainable.
- 19.** Learned senior counsel appearing for the defendant/respondent no.4, the transferee by virtue of the impugned sale deed, contends that there is no urgency even as per the pleadings in paragraph no.27 to 29 of the plaint and, as such, the prayer for *ad interim* injunction was rightly refused. Secondly, the suit is bad for non-joinder of the other shebait as mentioned in paragraph no.2 in the plaint. Thirdly, neither the 1922 deed nor any resolution of the other shebait

empowering the plaintiff no.2 to represent them has been annexed to the plaint, as required under Order VII Rule 14 of the Code of Civil Procedure. Thus, no injunction could be granted on the basis of the bald averments made in the injunction application or the plaint.

- 20.** It is next submitted that a previous suit of one Raktima, a sister of the plaintiff no.2 and standing on the same footing as the plaintiff no.2 in the genealogical table, for similar relief, was dismissed for default. The plaintiff/appellant no.2 herein was a party thereto and as such bound by the same. Thus, the present suit is barred in law.
- 21.** Learned senior counsel for the respondents no.4 cites *Wander Ltd And Anr v. Antox India P. Ltd* reported at 1990 (Supp) SCC 727 for the proposition that if any discretion is exercised by the Trial Court reasonably and in a judicial manner, the Appeal Court cannot interfere with the same on a different view.
- 22.** Learned senior counsel for the respondent no. 2 cites *GPT Health Care Private Limited v. Soorajmull Nagarmull and Ors.* reported at (2017) SCC OnLine Cal 16490, a Division Bench judgment of this Court, to argue that delay defeats equity and the prayer for ad interim injunction was rightly refused by the learned Trial Judge.
- 23.** In reply, learned senior counsel for the appellant submits that paragraph 25 of the plaint discloses the urgency since the defendants/respondents have been claiming the suit property to be secular, which is against the interest of the debuttar estate, and have been acting in terms of thereof. Even in the affidavit-in-opposition filed by the respondent no.1 to the application for addition of party

filed in this appeal, it has been claimed that the debuttar property is secular. Moreover, it is contended that delay is not fatal if there is patent *mala fide* or fraud practised, in support of which learned counsel reiterates the proposition laid down in *Vyalikaval Housebuilding Coop Society (supra)*.

- 24.** Upon hearing learned senior counsel for the parties and considering the legal and factual aspects of the case, it is found that the adjudication of the present matter hinges on certain questions which are discussed hereinbelow:

Whether the impugned order is bad in law

- 25.** The Trial Court has refused *ad interim* injunction primarily on three bases - first, that the order under Section 34 of the Trusts Act still stands, secondly, that there is a registered deed of sale pursuant to the above and thirdly, that the *lis pendens* transferees would be bound by the decree passed in the suit and as such, injunction ought not to be granted.
- 26.** However, all the three reasons are bad in law.
- 27.** The learned Trial Judge did not enter into the specific question raised by the plaintiffs/appellants as to the order passed under Section 34 being null and void in law. Without even a *prima facie* adjudication on such issue, the learned Trial Judge erred in law in relying on the same as sacrosanct.
- 28.** Insofar as the registered sale deed is concerned, the legal effect of the same would be utterly dependent on the validity of the order passed

under Section 34 of the Trusts Act. The principal relief in the suit, as framed in the plaint, is not that the sale deed is *per se* invalid for lack of registration but that it is not binding on the parties, being otherwise vitiated as no title passed by virtue of the same due to the nullity of the Section 34 order and since it was executed by one of the shebaita posing to be the sole shebait, thus, vitiating the execution of the deed by misrepresentation.

29. The existence of the registered sale deed, thus, could not have been the sole criterion for refusing *ad interim* injunction.
30. Thirdly, as held in *Sm. Muktakesi Dawn's* case (*supra*), the principle of *lis pendens*, by itself, is not a fetter to grant of injunction. The Division Bench of this Court, in the said case, held that it is true that the doctrine of *lis pendens* as enunciated in Section 52 of the Transfer of Property Act takes care of all *pendente lite* transfers; but it may not always be good enough to take fullest care of the plaintiff's interest vis-à-vis such a transfer. Although one of the premises there was that in a suit for specific performance, Section 52 of the Transfer of Property Act would not protect the interest of the plaintiffs against *bona fide* purchasers for value without notice, irrespective of the same, Section 52 merely provides that *lis pendens* transferees would be governed by the outcome of the suit, but does not prevent the unnecessary multiplicity created due to transfers being effected in the meantime. Hence, the protection of *lis pendens* itself is not a valid ground for refusal to grant *ad interim* injunction.

- 31.** Since the learned Trial Judge utterly failed to advert to all the above relevant enquiries, the said order is vitiated on such count, if not on others.

Whether the suit is barred by limitation

- 32.** In paragraph 25 of the plaint, the plaintiffs alleged that they learnt in or around the month of September, 2022 that endeavours were being made by the defendant no.2, acting through the transferee/defendant no.4, to deal with the property and to act in furtherance of the illegal deed of conveyance by seeking to mutate the name of defendant no.2 and thereafter the name of defendant no.4 as the owner of the land. In the subsequent paragraphs of the plaint, it has been alleged that the defendant nos.1 to 4 have been attempting to create rights in respect of the suit property and that the threat is ongoing and the prospect of alienation is imminent.
- 33.** In paragraph no.32 of the plaint, it has been stated that the plaintiff no.2 for the first time learnt in May 2019 about the proceedings before the learned District Judge. However, they derived the knowledge of the deed of sale only upon obtaining a certified copy of the deed dated July 2, 2015, which furnished the immediate cause of action for instituting the suit.
- 34.** Hence, on a plain reading of the plaint and the injunction application, it cannot be said that the suit is palpably barred by limitation.
- 35.** Moreover, learned senior counsel for the appellant rightly places reliance on Article 94 of the Schedule of the Limitation Act, 1963 as the governing provision in respect of the instant suit. Article 94

provides the limitation for suits to set aside the transfer of immovable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by the manager thereof for a valuable consideration, the limitation for which is 12 years from the date of knowledge of the transfer to the plaintiff. In the present case, the suit has been filed in the year 2023, which is well within such period.

- 36.** The respondent seeks to argue that this is not a transfer made by a manager. However, the term “manager”, in its generic sense, contemplates anybody who manages the property on behalf of the deity, which is synonymous with a shebait. As Ruby (since deceased), whose heirs are the present respondent nos.2 and 3, posed as the sole shebait and transferred the property in such capacity, the suit definitely comes within the purview of Article 94 of the Schedule to the Limitation Act and, thus, is not barred by limitation.
- 37.** Moreover, it is well-established in law that fraud vitiates all and a challenge on such ground can be taken before any forum at any point of time and the bar of limitation is not applicable in such circumstances. The said proposition was reiterated by the Supreme Court in *Vyalikaval Housebuilding (supra)* and has been consistently reiterated by the Supreme Court all along.
- 38.** In the present case, the allegation is that Ruby sold the property posing as the sole shebait whereas there are other shebaites to the property. It is a settled legal position that all shebaites must act together in the interest of the debuttar property, which first principle is violated in the present case.

- 39.** In *Bhabatarini Debi's case (supra)*, it was reiterated that on the death of the son who had survived the founder, the shebaitship should go to the son's heirs and not to the heirs of the father. It transpires from the genealogical table in this case that Late Sital Chandra Bandopadhyay, the settlor, left behind Panchanan, Bhabatarini and Sudhansu Badani as his heirs. There was a litigation between Ashmantara, the widow of Panchanan and Bhabatarini in respect of the shebaitship, where it was held that absolute devolution of the shebaitship was on Panchanan. Thus, Panchanan's heirs were to inherit the property. Sudhansu Badani did not leave any heir at his demise.
- 40.** Subsequently, the heirs of Panchanan, namely Ashalata, Kanaklata and Diptilata were to become shebaites. Diptilata left no issue at the time of her demise in the year 2010 whereas defendant/respondent nos. 1 to 3 claim through Kanaklata.
- 41.** Regarding the other branch of successorship through Ashalata, a suit was filed in 1948 to declare that Ashalata had no right, which culminated in a consent decree in the year 1951, whereby Ashalata relinquished her rights and Diptilata and Kanaklata were declared to be the joint shebaites.
- 42.** There was a subsequent suit in 1952 challenging the consent decree in which, in the year 1955, it was held that the consent decree was inconsequential as Ashalata, being married, did not inherit the shebaitship. Between 2012 and 2017, deeds were executed by certain heirs of Kanaklata relinquishing their shebaitship on the premise of which Raktima, a sister of the present appellant no.2, filed a suit in

the year 2014, the plaint of which was rejected under Order VII Rule 11 of the Code of Civil Procedure.

- 43.** A challenge was preferred against the same in 2019, which was disposed of by a Division Bench of this Court by a judgement and order dated March 29, 2019, thereby setting aside the impugned rejection of plaint and restoring the suit to its board in the Trial Court, leaving the grounds taken in the application under Order VII Rule 11 open for being canvassed at the time of trial.
- 44.** In the process, two important findings were returned by the Division Bench. First, that the Trial Court had failed to appreciate that unlike trusteeship, shebaitship or the office of the shebait is a property that is capable of being passed on and inherited. Thus, despite Ashalata's failure in the 1950's to claim any right in respect of shebaitship, by virtue of the death in intestacy of Diptilata, Ashalata's heirs may have got a fresh lease of life *qua* the property and the shebaitship pertaining to the deity. It was also observed by the Division Bench that the Trial Court failed to take account the fact that upon Diptilata's death in intestacy, even Ashalata's heirs became entitled to a part of Diptilata's estate to claim some modicum of right to the office of shebaitship, pertaining to the deity-in-question.
- 45.** Coming back to the genealogy in the present matter, Swapna, the plaintiff/appellant no. 2 and Raktima, her sister who filed the other suit, along with others, although heirs of Ashalata, derived rights of shebaitship through Diptilata, by dint of Diptilata's death in intestacy. Hence, as decided by the Division Bench and also reflected

tangentially from the judgement of the Privy Council in *Bhabatarini Debi's* case, the appellant no.2 definitely has a right of shebaitship in the property along with other heirs of Ashalata through Diptilata and the respondent nos. 1 to 3.

46. Ruby, the vendor in the impugned deed, was the widow of one Satrajit, an heir of Kanaklata, and also might have had a right as a co-shebait at best.
47. Thus, it is clear that Ruby could not have effected the transfer alone by claiming herself to be the sole shebait, which claim is writ large throughout the impugned transfer deed.
48. Hence, we are of the *prima facie* view that fraud vitiated the said deed and the suit cannot be said to be barred by limitation.

Delay/Urgency

49. It has been consistently pleaded in the plaint and the injunction application in the Trial Court that there have been continuing attempts to be mutate the property, first in favour of the respondent nos. 1 and 3 and thereafter in the name of the transferee/defendant/respondent no. 4. The property has been claimed by the respondents as secular at all points of time and thus, the urgency is a continuing cause in the present case. Hence, the proposition that delay defeats the relief of injunction cannot be accepted.

Whether the order passed under Section 34 of the Indian Trusts Act was a nullity

- 50.** The savings clause in Section 1 of the Trusts Act provides that nothing in the said Act applies, *inter alia*, to public or private religious or charitable endowments, thus taking religious and charitable endowments, either public or private, outside the purview of the said Act. Hence, even at the threshold, Section 34 of the Act is not applicable in respect of the suit property, which is a debuttar property.
- 51.** That apart, Section 34 confers a right on a trustee, without instituting a suit, to apply by petition to a principal court of original jurisdiction for its opinion, advice or direction on any present questions regarding the management or administration of the trust property. Hence, the scope of the said provision is restricted to management or administration of the trust property and not to alienation of the property in favour of third parties, detrimental to the interest of the estate.
- 52.** Section 34 also provides that the scope of the Section operates to issues of management or administration only, other than questions of detail, difficulty or importance, not proper in the opinion of the court for summary disposal. The question of transfer of property belonging to the debuttar estate by a single shebait posing to be the sole shebait, without entering into the question of whether there are other shebait and whether the transfer would be congenial to the interest of the debuttar estate, are questions of detail and difficulty as well as of

importance which could not have been adjudicated under Section 34 of the Trusts Act.

- 53.** Thus, in view of Section 1, savings clause as well as the scope of Section 34 of the Trusts Act, the order permitting the sale of the property-in-question in favour of third parties was passed *de hors* jurisdiction and, being vitiated by inherent lack of jurisdiction, is a nullity in the eye of law. Hence, the said order could not form a valid premise of the impugned transfer by way of the sale deed dated July 2, 2015.

Whether the suit property is a part of the debuttar estate

- 54.** The respondents claim that the suit property, not being a part of the Schedule of 1922 Arpananama, by which the property of the original settlor Sital was vested in the name of the appellant no.1-idol, cannot form a part of the debuttar property. However, by a subsequent admitted deed of 1929, Sital, the original settlor, donated the present suit property to the deity.
- 55.** Hence, although the suit property might not have been a part of the original Arpannama of 1922, the settlor, by the subsequent deed of 1929, vested the present property to the debuttar estate, thus bringing the present suit property within the hotchpot of the debuttar property belonging to the idol. Hence, such issue is also decided against the respondents and in favour of the appellant.

Whether, in view of the existence of a registered sale deed, no ad interim injunction could be passed

56. The very basis of the sale has been challenged on the ground that a debuttar property could not be transferred, thereby rendering it secular, that too at the behest of one of the shebait without concurrence of the others. A more serious aspect of the matter is that Ruby, one of the shebait, posed to be the sole shebait and transferred the property, which renders the said sale invalid.
57. Furthermore, the sale was based on the premise of an order passed under Section 34 of the Trusts Act, which has been held above to be a nullity, thereby vitiating the sale itself. Such questions were never gone into by the learned Trial Judge despite having raised by the appellants. In such context, the mere registration of the sale deed does not necessarily mean that the same is binding on the other shebait or the debuttar estate/idol.

Whether the doctrine of *lis pendens* is bar to grant of injunction

58. *Muktakesi Dawn's* case has reiterated that the doctrine of *lis pendens* as enunciated in Section 52 of the Transfer of Property Act is not a sufficient protection to the plaintiffs. Not only on the count of lack of protection against *bona fide* purchasers for value without notice, Section 52 merely provides the legal effect of a transfer *lis pendens*, which would be to bind such transferees. However, it is not a sufficient justification for the court to shut its eyes to attempts by the defendants in a suit and permit further transfers being effected in

favour of strangers, thereby creating unnecessary multiplicity of proceedings and complications. There is no component in Section 52 of the Transfer of Property Act or the doctrine of *lis pendens* to debar injunction being granted independently by the court under its powers under the Specific Relief Act as well as the Code of Civil Procedure. Hence, *lis pendens per se* is not a bar to grant of injunction.

Whether the previous order passed in Raktima's appeal operates as res judicata

59. An order passed in an appeal refusing to reject the plaint cannot operate as a bar even in a subsequent stage of the same suit, let alone in some other litigation. Even the Division Bench deciding the appeal held so, even apart from rendering findings which reiterate the rights of all the heirs of Ashalata, through Diptilata as co-shebaits of the debuttar property. Thus, instead of operating as a bar, the said order strengthens the case of the appellant.
60. Even if the said suit was dismissed for default, the principle of *res judicata* would not come in, since a dismissal for default does not decide the rights and liabilities of any of the parties conclusively.
61. The only bar which could operate in case of a dismissal for default is under Order IX Rule 9 of the Code of Civil Procedure. However, the said bar is very restrictive and debars only the plaintiff in the said suit and none else, including the defendants therein, from filing a fresh suit on such count even without setting aside the order of dismissal for default.

- 62.** Order IX Rule 9 also does not take away the right, title and interest of the plaintiffs in the property but merely prevents a fresh suit being filed on the self-same cause of action. Hence, if the plaintiff in a suit which has been dismissed for default sets up a defence on the basis of the title pleaded in the plaint in a different suit or asserts such right, title and interest in a subsequent suit filed on a subsequent and new cause of action, the bar of Order IX Rule 9 does not operate.
- 63.** Accordingly, the present plaintiffs are not barred in any manner from filing the present suit by dint of the dismissal of Raktima's suit for default.

Whether the pendency of a recall application in respect of the order of the learned District Judge under Section 34 of the Trusts Act debars the present suit/injunction application

- 64.** The pendency of such an application is immaterial, since the suit is on a much wider scope, challenging the impugned purported sale deed dated July 2, 2015 not only on the premise that the preceding order under Section 34 was a nullity but also because the sale deed itself is vitiated for non-joinder of the other co-shebaits. Also, since the suit itself challenges the sale deed also on the premise that Section 34 order was a nullity, the said question of nullity would form an incidental issue in the present suit. The mere pendency of an application for recall of the order under Section 34 is immaterial.
- 65.** Also, since *prima facie* it has been held above that the said order was a nullity in the eye of law, the subsequent application for recall of the

same is an independent proceeding and, at the worst, a superfluity of sorts and as such, is merely academic.

Whether in the absence of any prayer in the plaint for declaration of shebaitship of the plaintiff/appellant no.2, the suit is bad

- 66.** It is evident from the findings of the Division Bench in connection with the precious appeal from Raktima's suit, that the plaintiff/appellant no.2, claiming through Diptilata, although an heir of Ashalata, has a right of shebaitship at least on a *prima facie* footing. Since, the shebaitship of plaintiff no.2 has never been challenged at any point of time, no cause of action arose for determining the same. The present suit, filed on the basis of the genealogy of the family, which clearly shows that plaintiff no.2 is one of the shebaits of the deity (plaintiff no.1), and in the absence of any challenge to such shebaitship of plaintiff no.2, there arises no question of any such declaration being sought specifically. In any event, the same would be an ancillary issue in the present suit, that too subject to any challenge being raised in that regard in the written statement of the respondent at all. Hence, the absence of any prayer for such declaration in the plaint does not debar the suit in any manner.

Whether the suit is bad for non-joinder of the other shebaits

- 67.** As per the present frame of the suit, the other shebaits are not necessary parties, since the relief sought, for setting aside a sale of the

debuttar property, is in aid of and in the interest of the other shebait, acting in such capacity, as well.

- 68.** Also, no relief has been sought against the other shebait. Rather, the suit is in defence of the interest of the debuttar estate, which could enure only to the benefit of the other shebait and not to their detriment. Unlike a partition suit, where co-owners are necessary parties, in respect of a debuttar property, title vests in the idol, which, being an eternal minor in perpetuity, is dependent on its shebait to protect its interest.
- 69.** As rightly argued by the appellant, even a worshipper can file a suit, let alone a shebait, to protect the interest of the debuttar property on the principle that the idol, to whom the property belongs, is a perpetual minor. Hence, the non-joinder of the co-shebait is also immaterial in the present context. If the other shebait claim in the capacity of shebait, they cannot have any adverse interest to the plaintiffs in the present suit. On the other hand, if they claim contrary to the estate of the debuttar property, they would be acting not as shebait but diametrically contradictory to their capacity of shebait and thus cannot be viewed as necessary parties to the suit in the capacity of shebait.
- 70.** The ratio laid down in *GPT Health Care (supra)*, relied on by the respondent nos. 2 and 3, was rendered in the facts and circumstances of the said case. It is trite law that a judgment can only be a precedent in the perspective of the facts decided therein. The circumstances in the said case were entirely different than the present, inasmuch as

injunction was sought in respect of construction which has commenced on March 5, 2017 whereas the plaintiff, after becoming aware of the same in November 2016, filed the challenge subsequently. In such context, the court held that the plaintiff waited for more than a week and as such was not entitled to equity.

- 71.** As opposed to construction, however, in the present case, the legality and binding effect of a deed has been questioned and the injunction sought is from the same being given effect to, which is a continuing cause of action. Moreover, there has been recent activity, as alleged, on the part of the respondents, by way of attempting to mutate the property as well as asserting that the property is secular, contrary to the interest of the debuttar estate, which furnishes a continuing urgency in the case. Thus, the *ad interim* prayer for injunction could not be defeated on the ground of lack of urgency.
- 72.** The respondent no.4 has relied on *Wander Ltd (supra)*, for the proposition that the appeal court ought not to interfere or reassess the material to reach a conclusion different from the trial court. However, the essential rider in the said judgment was that the discretion has to be exercised by the Trial Court reasonably and in a judicial manner, in which case the Appellate Court could not have taken a different view.
- 73.** In the present case, the facts are clearly distinguishable, since the impugned order of the learned Trial Judge is not only unreasonable and lacks judicial application of mind, the same is devoid of reason and fails to advert to any of the vital considerations on the questions

of the various components of *prima facie* case, balance of convenience and inconvenience as well as irreparable injury.

- 74.** In the present case, we find that not only a strong *prima facie* case for the suit to be heard on merits and multiple triable issues have been raised by the plaintiffs/appellants, the balance of convenience and inconvenience lies squarely in favour of the plaintiffs/appellants since if third party interests are created and/or the impugned deed is given effect to, the relief sought in the suit may be rendered infructuous and/or unnecessary and unwarranted multiplicity of proceedings may arise. On the other hand, if the respondents stay their hands in that regard, subject to the outcome of the suit, the detriment suffered by them would not be as serious as that which would be suffered by the appellants if the *ad interim* injunction is refused.
- 75.** Thus, irreversible and irreparable injury may arise in the event *ad interim* injunction is not granted. Urgency, as discussed above, also enures in favour of the grant of injunction in the present case.
- 76.** Accordingly, F.M.A. No. 929 of 2023 is allowed on contest without any order as to costs, thereby setting aside the impugned order dated July 18, 2023 whereby *ad interim* injunction was refused to the respondents/appellants. The defendants/respondents are hereby restrained by an *ad interim* order of injunction from acting on the strength of the impugned sale deed dated July 2, 2015 as well as from transferring, alienating and/or creating any third party interest or parting with possession in respect of the suit property still disposal of the injunction application pending in the court below.

- 77.** The respondents shall file their respective written objections to the injunction application in the court below, if not already filed, within three weeks from date, whereupon the learned Trial judge shall endeavour to dispose of the injunction application itself as expeditiously as possible in the interest of justice.
- 78.** CAN 1 of 2023 and CAN 2 of 2024 are disposed of accordingly.
- 79.** However, it is made clear that the above observations have been rendered only in the context of adjudication of the *ad interim* prayer for injunction and shall not be treated to be binding at subsequent stages of the injunction application and the suit.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)