A PARMANAND PATEL (D) BY L.R. & ORS.

V.

SUDHA A. CHOWGULE & ORS.

Civil Appeal No. 1574 of 2009

MARCH 6, 2009

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[S. B. SINHA AND CYRIAC JOSEPH, JJ.]

Code of Civil Procedure, 1908 – O.40 r. 1 – Receiver – When to be appointed – Held: Is only when it is found to be just and convenient to do so – Appointment of receiver during C *pendency of suit is within the discretion of the court – Ordinarily receiver would not be appointed except on a prima facie finding that plaintiff has excellent chance of success in the suit – Plaintiff has to show a case of adverse and conflict claims of property but also emergency, danger or loss demanding* D *immediate action – Also it cannot be appointed unless case is made out depriving defendant of de facto possession – On facts, interim order by High Court appointing Official Receiver for assets of Company of testator, with certain directions not interfered with – However, order as regard giving exclusive* E *powers to the beneficiary of the Will to execute documents and also to induct tenants, not justified in view of the relationship between the parties.*

Appellant no 1 is a testator. Appellant no. 2 is his widow and respondent nos.1 and 2 are his daughters. F **Appellant no 1 executed a Will and also prepared letters of gifts in respect of his properties.**

In this appeal, the interim order passed by the Division Bench of High Court that the Receiver of High G **Court is appointed as Receiver for the assets of the company; that respondent no.1 would act as an Agent of the Receiver and render necessary information to the Chartered Accountant; that respondent no. 1 would operate the bank account singly; and that respondent no.**

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1 would execute documents and also induct tenants, is under challenge. A

Disposing of the appeals, the Court

HELD : 1.1 A receiver having regard to the provisions contained in O.40 r. 1 of the Code of Civil Procedure is appointed only when it is found to be just and convenient to do so. Appointment of a receiver pending suit is a matter which is within the discretionary jurisdiction of the Court. Ordinarily the Court would not appoint a receiver save and except on a prima facie finding that the plaintiff has an excellent chance of success in the suit. It is also for the plaintiff not only to show a case of adverse and conflict claims of property but also emergency, danger or loss demanding immediate action. Element of danger is an important consideration. Ordinarily, a receiver would not be appointed unless a case has been made out which may deprive the defendant of a de facto possession. For the said purpose, conduct of the parties would also be relevant. [Para 15] [190-A-D] B C D

1.2 1st respondent did not question that part of the order of the Division Bench whereby an Official Receiver of the High Court has been appointed as receiver in respect of the suit properties. Thus, a strong prima facie case has been found in favour of the appellants. Parties have brought out medical reports in respect of late P which gives different pictures about his mental condition at the relevant time. The relevant date for determining the mental faculty of late P would be 23rd January 2005 when the Will was executed, but for arriving at the said conclusion his mental condition, both prior thereto and later, would be relevant. Prima facie, appellant no.2 was compelled to file a suit in order to protect the interest of her husband. Suit was entertained and interim order was passed. The Division Bench in order to satisfy itself, called late P in their chamber. He was found to be totally E F G H

A confused and incoherent. In the said situation, a panel of doctors was constituted for examining him and the said report of the said panel of doctors is considered. [Para 16] [190-D-H; 191-A]

1.3 The property in suit is worth more than Rs.1000 B crores. There are several companies. Respondent no.5-company own huge properties. There are two multi-storeyed buildings which are occupied by a large number of tenants. Each of the heirs and legal representatives of late P in the event he is found to have died intestate, would C have 1/3rd share. Appellant no.2 does not claim exclusive interest in respect of the flats purported to have been gifted in her favour by her late husband. A statement has also been made on behalf of the first respondent that she would have no objection to share the entire property half and half D between herself and appellant no.2. [Para 17] [191-A-C]

1.4 Several attempts were made for reconciliation between the parties. The dispute was referred to a mediator. Parties, however, for reasons best known to them and despite the fact that for all intent and purport E the dispute hinges on a narrow pedestal, were not able to settle their disputes. Therefore, it appears that there is a lot of controversy between the parties. There is also a lot of bad blood. [Para 18] [191-D-E]

F 1.5 The High Court in its impugned judgment proceeded on the premise that prima facie late P had a desire to settle the properties in favour of his two daughters in equal shares. He made a meticulous plan therefor which would be tax efficient. To the said extent, G 1st respondent's case appears to have been supported by H, brother of appellant no. 2 herself. But, with respect, what was not taken into consideration by the Division Bench of the High Court was that admittedly two sets of papers were prepared-one on the basis that the 2nd appellant would surrender her 5% share in the company. H

Late P even signed the first set of papers. She, however, refused to part with her share in the company. It was then the second set of documents were executed which not only included the undated Will but also the two letters addressed to respondent no. 1 and 2 respectively. The said letters prima facie had been drafted in a manner which would ultimately be beneficial to the interest of respondent no. 1 alone. Presumably, at that point of time the 2nd appellant expressed her stray resent in relation to the whole affair. Rightly or wrongly, she was not ad idem with her husband. It gave rise to execution of a third set of document which was signed not only by late P but also the appellant no.2 conferring a power of review upon SP. It was also attested by RA. It is understood that the said SP alone was helping late P in running the business. It is in the said context that letter dated 26th August 2005 written by SP to RA assumes importance. [Para19] [191-F-H; 192-A-D]

1.6 The Will and the letters of gift as evidenced by the two letters dated 23rd January 2005 were subject to review by SP. He having opined that the arrangement being detrimental to the interest of P should be given primacy at this stage. The case of the 1st respondent may or may not be correct. It is possible that late P had a desire to divide the property in equal shares between her two daughters. However, for the purpose of passing an interlocutory order, it is proceeded on the premise that the rights of the parties would have to be considered in terms of the provisions of the Hindu Succession Act, 1956, that is, on the assumption that P died intestate in which event share of each of his heirs would be one third. Distribution of property amongst the children by the parents, however, may be found to be desirable if the mother wants to retain her share and deal with the same on her own. No exception can be taken thereto. Ordinarily, a Court shall presume the existence of a right in the property of the deceased in favour of the 2nd appellant

A unless a strong prima facie case is made out that she had been deprived therefrom. It is not for the court to consider as to whether her stand is fair to one of her daughters or not. Even if it be held that the Will and the letters had been executed by late P in sound disposing mind, conduct of B respondent no. 1 cannot be lost sight of. She might be accompanying her father to various parts of the country as also abroad to see that P received best of the treatment, but then respondent no. 2 had also been residing in the same bungalow with her father despite her marriage in C 1979. Above all, 2nd appellant had also not only been looking after her husband but also accompanying him for his treatment wherever it was found to be necessary. [Para 19] [192-E-H; 193-A-D]

1.7 Having taken into consideration all aspects of the D matter, it is a fit case where the High Court should have appointed a receiver and/or an administrator with suitable directions. To the aforementioned extent, the order of the High Court is interfered with as respondent no. 1 alone had been given exclusive powers not only to execute E documents but also induct tenants. The said job keeping in view the relationship between the parties should better be left with an officer of the Court who would be subject to directions as may be issued by the High Court from time to time. [Para 20] [193-E-G]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1574 of 2009

From the Judgement and Order dated 07.09.2006 of the Hon'ble High Court of Judicature at Bombay in Appeal No. 866 G of 2005 in Notice of Motion No. 2626 of 2005 in Suit No. 2435 of 2005 and Notice of Motion No. 2620 of 2005 in Suit No. 2435 of 2005.

WITH

H Civil Appeal No. 1575 of 2009

Mukul Rohatgi, Anil Divan, S. Ganesh, Shyam Divan, J.P. Sen, Shruti Choudhary, Swati Singh, A.M. Khatllawala, Jayashree Singh (M/s Fox Mandal & Co.) C. Rashmi Kant, Rashna Dastoor, J.P. Sen, Mahesh Agarwal, E.C. Agrawala Rishi Agrawala, Akshay Ringe, R.F. Nariman, C.A. Sundaram, Aspi Kapadia, Sameer Parekh, Ranjeeta Rohtagi, Rohini Mussa, Abhishek Gupta, Zafar Inayat, Anand Kannan (M/s Parekh & Co.) Hemant Choudhari, S.W. Haider, Sanjeev Malhotra, for the appearing parties.

The Judgement of the Court was delivered by

S.B. SINHA, J.

1. Leave granted.

C.A. NO. 1574 of 2009 @ S.L.P. (C) No.17162 of 2006

2. Parmanand Patel, since deceased, was a very wealthy person. He floated several companies including the 5th respondent Company herein known as M/s. Tulsidas V. Patel Pvt. Ltd. Appellant Indu P. Patel is his widow. He also left behind his daughters, viz., Sudha A. Chowgule and Jaya P. Patel, respondent nos.1 and 2 respectively. The company has its assets consisting of shares in different companies as also immovable properties. It owns two multi-storeyed buildings known as "Kanchanjunga" and "D-Tower Building" situated at Peddar Road, Mumbai. It also owns a bungalow known as "Bella Vista" situated at the same road.

According to the plaintiffs (appellants herein), the approximate value of the assets held by the company would be about Rs.367 crores. However, according to the 1st defendant (respondent no.1 herein), the value of the properties owned by the company and its subsidiaries would be about Rs.1120 crores.

Parmanand Patel held 85% shares in the said company. The remaining 15% shares were held by Indu Patel. Sudha and Jaya in equal proportion.

A Indisputably, Parmanand Patel had been suffering from various diseases including some neurological ones. For his treatment, he used to frequently visit United States of America accompanied by his wife and daughter Sudha.

One Dr. Hemant Patel, a resident of Mombasa, Kenya is
B the brother of appellant no.2. One Shirish Patel, who is a chartered accountant is the nephew of Parmanand Patel.

Indisputably, on 23rd January 2005 late Parmanand Patel executed a Will. He also signed letters which are in the nature
C of gift and/or arrangements in regard to some of his properties. It is also not in dispute that he had gifted two flats in favour of the first appellant apart from making a mediclaim policy for her.

3. Although the Will is undated, it is accepted that the same was also executed on 23rd January 2005, i.e., on the same date
D when the documents were executed. By reason of the said Will, he is said to have bequeathed 5% of his property to Sudha and 50% to Jaya. In a letter addressed to the 1st respondent, viz., Sudha, he is purported to have recorded that the he had given all his shares to her. By reason of one of the letters
E addressed to the 1st respondent, he is purported to have given all of his shares to her with a direction that she should retain 46% to herself and give 39% to Jaya. The said gift is said to have been made on certain conditions. A similar letter was also addressed to the 2nd appellant herein. It is, however, not in dispute
F that appellant no.2 did not agree to the aforementioned arrangement. The said Will was attested by one Dr. Zarir F. Udwadia and one Sh. R.A. Shah, Advocate.

4. Indisputably, when the aforementioned purported Will was executed and the letters were written, Jaya was in the United
G States of America. Shirish Patel was also in United States. As appellant no.2 admittedly did not agree to the said purported mode and manner of disposition of properties by her husband, another document was prepared on 23rd January 2005 itself, which reads as under :

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" TO WHOMSOEVER IT MAY CONCERN

All the documents which I have signed today shall be reviewed by my nephew Mr. Shirish Patel (C.A.). His suggestion will be incorporated in these documents. My (Mrs. Indu Patel) 5% interest in the Tulsidas V. Patel will be given equally to my daughter Sudha and Jaya upon my demise.

Sd/-
P.T. Patel
Mumbai
Dated 23.1.2005

Sd/-
I.P. Patel

Sd/-
Solicitor."

The said document was signed not only by Parmanand Patel and Indu Patel but also by Shri R.A. Shah, the Solicitor.

Certain developments took place thereafter. A meeting of the company was held wherein Indu Patel was shown to have been present,

However, from perusal of a letter dated 01st September 2005, it now transpires that Indu Patel was given leave of absence on that date. In the said meeting various decisions were taken, namely, transfer of shares, appointment of Chairman, custody of the minute book, adoption of the company etc. It was claimed by Sudha by reason of resolution adopted in the said meeting, became the Chairman of the company.

5. Yet again, a Board meeting of the Company was called on 25th January 2005 which was attended only by Sudha and Parmanand Patel. Appointment of Shiraj Salelkar, an Advocate being an Assistant to Mr. R.A. Shah and Ms. Usha Moraes as Directors in the Board of the company was informed to the Board and a resolution was adopted appointing them as Additional Director of the company. Yet again, a meeting of the

A Board was held on 06th March 2005 wherein Sudha and Parmanand Patel were present. In the said meeting, resignation of Ms. Usha Moraes was accepted and in his place Arjun A. Chowgule, son of Sudha, was appointed as Additional Director of the company. A resolution was also adopted with regard to
B the operation of the bank account in terms whereof Sudha was permitted to operate the bank account singly and others were permitted to operate only with her. Another purported meeting was held on 21st April 2005 wherein Sudha, Parmanand Patel and Arjun Chowgule were present. In the said meeting, on the
C alleged ground that Jaya Patel remained absent from the Board meetings which had taken place for a period of 3 months from January 2005 to March 2005, applying the provisions of Section 283(1)(g) of the Companies Act, it was resolved that she would be deemed to have vacated the office of Director of the company
D with immediate effect.

6. 2nd appellant herein alleging that her husband Parmanand Patel was unable to manage the affairs of the company and his properties, filed a suit on his behalf in the original side of the Bombay High Court on or about 12th
E September 2005 praying, *inter alia*, for the following reliefs :

"(a) that it be declared that the document purporting to be the Will dated 23rd January 2005 of Plaintiff No.1, being Exhibit "G" hereto, the two letters dated 23rd January 2005, being Exhibits "J" and "K" hereto and the purported gift / transfer of
F shares of Defendant No.5 by Plaintiff No.1 in favour of Defendant No.1 as recorded therein are null, void and of no effect in law;

(b) that Defendant No.1 be ordered and decreed to deliver
G up the said document purporting to be the Will dated 23rd January 2005 of Plaintiff No.1, being Exhibit "G" hereto, the two letters dated 23rd January 2005, being Exhibits "J" and "K" hereto for cancellation and the same be cancelled by and under the orders and decree of this Hon'ble Court;

H (c) that the purported transfer of 85% shares held by Plaintiff

No.1 in Tulsidas V. Patel Pvt. Ltd., Defendant No.5 in favour of Defendant No.1 be set aside and cancelled and Defendant No.1 be ordered and decreed, if necessary, to transfer the said shares to the Plaintiff No.1;

(d) that Defendant No.5 be ordered and directed to record Plaintiff No.1 as the holder of the 85% shares in the records of Defendant No.5 and for that purpose to do all acts, deeds and things and make proper entries in its records as may be necessary;

(e) that it be declared that the appointments of Defendant No.3 and 4 as directors on the Board of Directors of Tulsidas V. Patel Pvt. Ltd.., Defendant No.5 are not valid;

(f) that alternately, Defendant No.3 and 4 be removed as directors from the Board of Directors of Defendant No.5;

(g) that the appointment of Defendant No.1 as the Chairperson of the Board of Directors of Defendant No.5 be set aside;

(h) that Defendant No.1 be directed to return the records, registers, minutes books and books of accounts of the Defendant No.5 company to its registered office;"

Several prayers for grant of interim relief were also prayed for.

7. A learned Single Judge of the High Court passed an interim order on 16th September 2005 relevant portion whereof reads as under :

> "…. However, I have considered the aforesaid contention in the light of the allegation made in the plaint and large number of material produced pertaining to mental and physical health of plaintiff no.1. I have also taken into consideration the fact that the right claimed by defendant no.1 in respect of the said 85% share in the defendant no.5 company is based on a gift deed. In my opinion till the hearing and final disposal of the motion said shares

A are required to be frozen and kept intact till the dispute is decided either way at the hearing of the motion. It is not possible to permit defendant no.1 at this stage to act as if there is a valid gift in her favour of the said 85% share in the defendant no.5 company merely on the ground that B there are certain documents produced which are supposed to have been executed by plaintiffs during the contemporaneous period during the time the said gift deed is supposed to have been executed. Motion undoubtedly requires a deeper consideration.

C 2. Till the hearing and final disposal of the motion, none of the parties to the present suit shall exercise any right whatsoever in respect of the said 85% shares which are the subject matter of the gift deed in favour of defendant no.1 in defendant no.5 company.

D 3. In the light of the rival claims about the mental health of the plaintiffs, I direct constitution of panel of Doctors drawn from J.J. Hospital, Bombay Hospital and Lilavati Hospital dealing with psychiatrist and neurological department who will examine the said plaintiff and make report directly to the court. Plaintiff E no.2 shall pay the necessary cost, charges and expenses in respect thereof. Prothonotary and Senior Master, High Court, Mumbai is directed to intimate the respective Hospital to nominate one doctor from each of the said Hospitals for the purpose of aforesaid test of the plaintiff no.1. The report of such F panel will be furnished within 4 weeks from today.

4. Union Bank of India is directed to continue the arrangement of joint operation of the bank account between defendant no.1 and 2. In so far as assets of the company is G concerned, plaintiff no.2 and defendant no.2 shall maintain the said assets of the company as it is and will not sell or dispose of the assets or create any third party rights except in ordinary course of business. Plaintiff no.2 and defendant no.2 shall keep inform defendant no.1 about the business decisions if any, taken by them. Motion made returnable in usual course."

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8. An intra court appeal was preferred thereagainst by Sudha. A

9. Keeping in view the directions issued by the learned Single Judge in paragraph 3 of the order dated 16th September 2005, the learned Judges of the Division Bench interacted with Parmanand Patel (since deceased) in their chambers and found him totally incoherent and confused. In the aforementioned situation, by an order dated 11th October 2005, directed as under : B

> "3. After hearing both parties, we direct constitution of a panel of Doctors from K.E.M. Hospital, Bombay Hospital and Lilavati Hospital from their respective departments of Psychiatry and Neurology. That is to say from each hospital one doctor each from the aforesaid department shall examine respondent No.1 from Psychiatric and Neurological point of view, with regard to alleged mental disorder of respondent No.1. We request the panel of Doctors to expeditiously give their report to this Court. C D
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> 4. Learned counsel for both appellant and respondents state that they will render all assistance to the panel and bear the expenses of Doctors' fees. Needless to state that the aforesaid panel of Doctors while examining respondent No.1 will not be influenced in any manner by our prima facie view as a lay persons. Place the matter on board on 27th October 2005." E F

10. Indisputably, pursuant thereto or in furtherance thereof, Parmanand Patel was examined by a panel of six doctors. They examined him on 07th December 2005. So far as his neurological examination is concerned, the doctors awarded 24 points (wrongly stated to be 23) out of 30 indicating a minimal Cognitive Deficit of functioning. He was also examined in regard to his mental state. It was concluded: G

> "Conclusion:
>
> It is the unanimous feeling of the six members of this panel H

A that Mr. Patel is suffering from definite deficit, in his cognitive functions and also his working memory, which lead to an impairment in all aspects of independent functioning.

B The Memory Deficits are significant, in both domains of registration and recall of new memories as well as in the retrieval of his past memories, specifically pertaining to his personal memories of his Family and Property holdings and his business ventures.

C The Cognitive Deficits also lead to improper decisions and behaviors towards people, which can cause problems with caregivers at this stage. Thus he is incapable of taking executive decisions regarding his routine living activities at home and there is a definite impression of his inability to function independently in a financial or other business activity.

D

It is also obvious that as Mr. Patel is incapable of living by himself in an unsupervised environment, he will need to be monitored, supervised, and assisted, even in his routine

E Activities of Daily Living, at all times."

11. Parmanand Patel expired on 20th November 2006. An application for amendment of the plaint was filed. Leave was granted to amend the plaint. Jaya was also allowed to be transposed to the category of plaintiff from the category of

F defendant by an order dated 10th January 2008.

12. The interim application came up for hearing before a Division Bench of the High Court. By reason of the impugned judgment, it was directed:

G "41. In the circumstances, to safeguard the interest of all the parties, we pass the following interim order which should meet the ends of justice :-

(1) The Receiver, High Court, Bombay is appointed as

H Receiver for the assets of Tulsidas V. Patel (Pvt.) Ltd. and

Defendant No.1 (Sudha) will act as an Agent of the Receiver. No steps will be taken hereafter based on the documents of gift dated 23rd January 2005. Actions taken so far will also be subject to the result of the suit.

(2) The Receiver will appoint a Chartered Accountant from his panel who will first get an inventory of the properties of Tulsidas V. Patel (Pvt.) Ltd. done in four weeks hereafter. The foregoing clauses will become operational only thereafter.

(3) Defendant No.1 (Sudha) will be permitted to execute all necessary agreements on behalf of the Company for the purposes of safeguarding the assets thereof. She will not encumber nor sell any of the assets of the Company nor will she create any third party rights in any manner though she will be at liberty to give the properties/flats on licence basis. The terms of the document of licence and particularly the licence fee will have to be approved by the above referred Chartered Accountant.

(4) Defendant No.1 (Sudha) will be permitted to operate the bank account of the Company with Union Bank of India and the restriction to operate the same only along with Jaya will stand vacated.

(5) Defendant No.1 (Sudha) will deposit all the earnings of the Company in its account with Union Bank of India and will also honour the liabilities thereof.

(6) The Company will bear all the medical and travel expenses of Plaintiff No.1 (Parmanand Patel) and Plaintiff No.2 (Induben) as and when required.

(7) From the income of the Company, after the liabilities are met, 33% will be made over to Jaya (Defendant No.2) and 5% to Plaintiff No.2 (Induben). Sudha will be permitted to retain 33% of the income for herself. The remaining portion of the income will be invested in fixed deposits with Union Bank of India from time to time. The aforesaid

A payments and investments will be made by taking the accounts at the end of every 6 months. The accounts will be got approved from the above Chartered Accountant.

(8) Defendant No.1 (Sudha) will render all necessary information to the Receiver and the Chartered Accountant
B and copies of these accounts will be made over to Defendant No.2 (Jaya) and Plaintiff No.2 (Induben).

(9) The payments, receipts and investments will be without prejudice to the rights and contentions of all the parties
C and subject to the outcome of the suit.

(10) Plaintiff No.1 will continue to remain in possession of the Bella Vista Bungalow till the hearing and final disposal of the suit. Plaintiff No.2 (Induben), Defendant No.2 (Jaya) and her husband and daughters will be permitted to stay
D with him under the orders of Court.

(11) All the properties and assets of the Company will continue to remain in the name of the Company and all agreements concerning them will continue to be entered into only in the name of the Company.
E

(12) Defendant No.1 (Sudha) will deposit an amount of Rs.50,000/- with the Receiver from the Company's account towards charges and expenses of the Chartered Accountant and the Receiver to begin with. The costs and
F charges of the Receiver and the Chartered Accountant will be borne from the Company's account from time to time."

13. Mr. Mukul Rohatgi and Mr. Anil Divan, learned senior counsel appearing on behalf of the appellants, *inter alia*, would
G submit :

i. Sudha meticulously planned the entire strategy to take control over the company in a systematic manner beginning from December 2004 when a second ration card was applied for; shares were
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said to have been lost and steps were taken even to have another common seal, the company was proclaimed to be the owner of the bungalow and Parmanand Patel became a licencee in the said premises for a maximum period of one year and ultimately not only the purported Will was executed but also letters of gifts were prepared and addressed to Sudha and Jaya followed by various Board meetings, from a perusal whereof it would appear that she could acquire complete control over the company and, thus, the interim arrangement must be interfered with.

ii. Keeping in view the fact that Sudha is a party to forgery of documents, she should not have been appointed as an agent of the receiver particularly when the Court had found out a *prima facie* case in favour of the 2nd appellant.

iii. One of the basic legal principles, as propounded by this Court in various decisions is that when a Will is unnatural surrounded by suspicious circumstances and does not satisfy the conscience of a Court, such a Will cannot be accepted.

iv. The High Court should not have shown any indulgence in favour of Sudha. The reports of the doctors as also the observations made by the Division Bench of the High Court in its order dated 16th September 2005 itself would suggest that late Parmanand Patel was not mentally fit to take any decision by himself and thus no credence could have been given to the documents including the Will executed on 23rd January 2005. It was unnatural, the learned counsel argued that Parmanand Patel would consult Shri R.A. Shah who had been appearing against the company and in fact as lawyer for the companies represented by Sudha and her husband.

A 14. Mr. Rohington Nariman and Mr. C.A. Sundaram, learned senior counsel appearing for the respondents, on the other hand, would submit

i. The Will and the letters of giving having been ttested by two independent persons, viz., Dr. Hemant Patel and and R.A. Shah and one of them being the brother of Indu Patel must be held to have been executed by late Parmanand Patel by way of family arrangement.

ii. Indu Patel having been provided with sufficient income as two flats had been given to her as also a third flat in the joint name of the appellants herein, the annual income whereof would be about Rs.60 lacs per month, the decision of late Parmanand Patel that his property should be divided half and half between his two daughters cannot be said to be either illegal or unfair. Such a process, according to learned counsel, started in 2003 as Sudha had been accompanying him for his treatment to other parts of the country as also United States. The mental condition of the testator having been found to be good by the doctors, as would appear from the certificate issued by Dr. Peter Black of Brigham And Women's Hospital, Boston on 21st January 2005 who examined him in October 2004 at Jaipur, certificate dated 28th January 2005 issued by Dr. M.M. Bahadur, Cons Nephorologist at Jaslok Hospital, certificate dated 30th January 2005 issued by Prof. R. Gokal, Dept. of Renal Medicine, Manchester Royal Infirmity and certificate dated 01st March 2005 issued by Dr. Ajay Singh, Harvard Medical School, would clearly go to show that he had a good mental faculty. In fact, he attended a meeting of George Noble Pvt. Ltd. along with his nephew Shirish Patel on 03rd February 2005. It has also been brought to our notice that vide letter dated 13th April 2005 addressed to Subhash Patel, Parmanand Patel refused the letter of

resignation submitted by him which would show that he was in complete control of the situation and knew what he had been doing.

iii. Brother of Indu Patel, viz., Dr. Hemant Patel, a practising surgeon at Mombasa visited the family and only to him late Parmanand Patel expressed his intention to divide the assets/shareholding of the company equally between his two daughters during his lifetime and to divide his other assets after his death and for the said purpose he wanted such separation to be done during his lifetime and in a tax efficient manner. It was pursuant to the said desire, the aforementioned documents were prepared. The factual scenario would furthermore be apparent from a letter written to Indu Patel by her brother on 29th January 2005.

iv. Surrender of tenancy in respect of the bungalow 'Bella Vista' was necessitated because all formalities were required to be complied with and it was never the intention of the first respondent to drive her parents out therefrom as would appear from a statement made by he counsel before the Division Bench.

v. The order of the Division Bench of the High Court having safeguarded the interest of all concerned and having been passed as the first respondent had been acting as Chairperson of the company for a long time, the impugned judgment should not be interfered with particularly when she is required to operate not only under the receiver but also in close collaboration with a chartered accountant.

15. Although, the learned counsel for the parties have addressed us at great length and in fact we have been taken through the minutest details of the relevant and important documents filed and relied on by the parties, we are of the

A opinion that it would not be prudent on our part to discuss the same in great details.

A receiver, having regard to the provisions contained in O.40 R.1 of the Code of Civil Procedure, is appointed only when it is found to be just and convenient to do so.

B

Appointment of a receiver pending suit is a matter which is within the discretionary jurisdiction of the Court. Ordinarily the Court would not appoint a receiver save and except on a *prima facie* finding that the plaintiff has an excellent chance of C success in the suit. It is also for the plaintiff not only to show a case of adverse and conflict claims of property but also emergency, danger or loss demanding immediate action. Element of danger is an important consideration. Ordinarily, a receiver would not be appointed unless a case has been made out which may deprive the defendant of a *de facto* possession. D For the said purpose, conduct of the parties would also be relevant.

16. 1st respondent did not question that part of the order of the Division Bench whereby an Official Receiver of the High E Court has been appointed as receiver in respect of the suit properties. We would, therefore, proceed on the premise that a strong *prima facie* case has been found in favour of the appellants.

Parties hereto have brought out medical reports in respect F of late Parmanent Patel which give us different pictures about his mental condition at the relevant time. It is no doubt true that the relevant date for determining the mental faculty of late Parmanand Patel would be 23rd January 2005, but for arriving at the said conclusion his mental condition, both prior thereto G and later, would be relevant. *Prima facie*, appellant no.2 was compelled to file a suit in order to protect the interest of her husband. Suit was entertained and interim order was passed. The Division Bench, in order to satisfy itself, called late Patel in their chamber. He was found to be totally confused and H incoherent. It is in the aforementioned situation, a panel of

doctors was constituted for examining him. We have noticed the report of the said panel of doctors.

17. The property in suit is worth more than Rs.1000 crores. There are several companies. Respondent no.5-company herein own huge properties. There are two multi-storeyed buildings which are occupied by a large number of tenants. Each of the heirs and legal representatives of late Parmanand Patel, in the event he is found to have died intestate, would have 1/3rd share. Appellant no.2 does not claim exclusive interest in respect of the flats purported to have been gifted in her favour by her late husband. A statement has also been made on her behalf of the first respondent herein that she would have no objection to share the entire property half and half between herself and appellant no.2.

18. We may also place on record that several attempts have been made for reconciliation between the parties. At the instance of the learned senior counsel appearing on behalf of the parties, the dispute was referred to a learned mediator. Parties, however, for reasons best known to them and despite the fact that for all intent and purport the dispute hinges on a narrow pedestal, have not been able to settle their disputes.

It, therefore, appears that there is a lot of controversy between the parties. There is also a lot of bad blood.

19. The High Court in its impugned judgment proceeded on the premise that *prima facie* late Parmanand Patel had a desire to settle the properties in favour of his two daughters in equal shares. He made a meticulous plan therefor which would be tax efficient. To the aforementioned extent, 1st respondent's case appears to have been supported by Dr. Hemant Patel, brother of Indu Patel herself. But, with respect, what was not taken into consideration by the Division Bench of the High Court was that admittedly two sets of papers were prepared – one on the basis that the 2nd appellant would surrender her 5% share in the company. Late Parmanand Patel even signed the first set of papers. She, however, refused to part with her share in the

A company. It was then the second set of documents were executed which not only included the undated Will but also the two letters addressed to Sudha and Jaya respectively. The said letters *prima facie* had been drafted in a manner which would ultimately be beneficial to the interest of Sudha alone. Presumably, at that B point of time the 2nd appellant expressed her stray resent in relation to the whole affair. Rightly or wrongly, she was not *ad idem* with her husband. It gave rise to execution of a third set of document which was signed not only by late Parmanand Patel but also the appellant no.2 conferring a power of review upon C Shirish Patel. It was also attested by R.A. Shah. We have been given to understand that the said Shirish Patel alone was helping late Parmanand Patel in running the business. It is in the aforementioned context that letter dated 26th August 2005 written by Shirish Patel to R.A. Shah assumes importance. It D reads as under :

> "Further to my letter dated 25th August 2005, I wish to confirm that all the documents purported to have been executed on January 23, 2005 by Parmanandkaka dealing with his assets and the acts of Sudha pursuant thereto are E detrimental to the interest of Parmanandkaka and therefore he should not be bound by the same."

The Will and the letters of gift as evidenced by the two letters dated 23rd January 2005 were subject to review by Shirish Patel. He having opined that the arrangement being detrimental F to the interest of Parmanand Patel, in our opinion, should be given primacy at this stage. We would, however, refrain ourselves from making any comment upon the correctness or otherwise of the one set of reports submitted by the medical experts in preference to another. The case of the 1st respondent may or G may not be correct. It is possible, as has been contended by her, that late Parmanand Patel had a desire to divide the property in equal shares between her two daughters. However, for the purpose of passing an interlocutory order, we may proceed on the premise that the rights of the parties would have to be H considered in terms of the provisions of the Hindu Succession

Act, 1956, that is, on the assumption that Parmanand Patel died intestate in which event share of each of his heirs would be one third. Distribution of property amongst the children by the parents, however, may be found to be desirable if the mother wants to retain her share and deal with the same on her own. No exception can be taken thereto. Ordinarily, a Court shall presume the existence of a right in the property of the deceased in favour of the 2nd appellant herein unless a strong *prima facie* case is made out that she had been deprived therefrom. It is not for the court to consider as to whether her stand is fair to one of her daughters or not. Even if it be held that the Will and the letters had been executed by late Parmanand Patel in sound disposing mind, conduct of Sudha cannot be lost sight of. Sudha might be accompanying her father to various parts of the country as also abroad to see that Parmanand Patel received best of the treatment, but then Jaya had also been residing in the same bungalow with her father despite her marriage in 1979. Above all, 2nd appellant had also not only been looking after her husband but also accompanying him for his treatment wherever it was found to be necessary. We, as at present advised, do not wish to comment upon the contentions raised before us that the Will was not only unnatural but was surrounded by a large number of suspicious circumstances. Such a question would fall for consideration of the High Court in the suit.

20. We, therefore, having taken into consideration all aspects of the matter, are of the opinion that it is a fit case where the High Court should have appointed a receiver and/or an administrator with suitable directions. We have, to the aforementioned extent, intend to interfere with the order of the High Court as Sudha alone had been given exclusive powers not only to execute documents but also induct tenants. The aforementioned job, in our opinion, keeping in view the relationship between the parties should better be left with an officer of the Court who would be subject to directions as may be issued by the High Court from time to time.

We leave the matter relating to imposition of conditions

A and/or appointment of chartered accountant or others to assist the receiver completely at the hands of the High Court. In a case of this nature, however, the official receiver himself may not be appointed as receiver.

21. Before parting with this case, however, we may place
B on record that Mr. Hemant Choudhari, learned counsel appearing for respondent no.6-Bank submitted that appellants and the respondent-companies owned by appellants and the first respondent even borrowed a sum of about Rs.5 crore. The High Court may consider desirability of protecting the interest
C of the bank also.

22. This appeal is allowed to the aforementioned extent and with the aforementioned observations and directions.

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23. In view of the order passed in the appeal arising out of S.L.P.(C)No.17162 of 2006, this appeal would also stand disposed of on the above terms.

24. Costs of these appeals shall abide by the result of the
E suit.

N.J. Appeals disposed of.