

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 73 OF 2014

Shri Satish S/o Mahdav Kale,
Age 68 years, Occu.: Pensioner,
R/o. Flat No.1, Building No.1,
Bhikamchand Jain Nagar,
Pimprala Road, Jalgaon,
District Jalgaon

.. Appellant
(Orig. Deft. No.1)

Vs.

1. Smt. Jayashiri Ashok Kale,
Age 63 years, Occu.: Household Work,
R/o. Gadhi Khali, Erandol,
Tq. Erandol, Dist. Jalgaon
2. Shri Harshad S/o Ashok Kale,
Age 40 years, Occu.: Business,
R/o Gandhi Khali, Erandol,
Tq. Erandol, Dist. Jalgaon
3. Shri Chandan S/o Ashok Kale,
Age 34 years, Occu.: Business,
R/o Gadhi Khali, Erandol,
Tq. Erandol, Dist. Jalgaon
4. Shri Alhad S/o Madhav Kale,
Age 61 years, Occu.: Advocate,
R/o. Gadhi Khali, Erandol,
Tq. Erandol, Dist. Jalgaon
5. Mrs. Sheela Sharadchandra Lad,
Age 63 years, Occu.: Household work,
R/o. At Post : Belha, Tq. Junnar,
Dist. Pune
6. Smt. Sindhu Madhav Kale,
Age 85 years, Occu.: Household work,
R/o. Gadhi Khali, Erandol,
Tq. Erandol, Dist. Jalgaon

(died through LRs. - respondent
nos.1 to 5 already on record)

7. Mrs. Pallavi Sunil Jain,
Age 39 years, Occu.: Household,
R/o. C-6, Sanmati Building,
P & T Colony, Dombiwali (East)
8. Shri Shrikant S/O Jaikumar Bannore,
Age 68 years, Occu.: Pensioner,
R/o. 283/74, Alankar Park,
Tanaji Nagar, Chinchwad,
Pune-33

.. Respondents
(Resp. No.1 to 5 - Orig.
Plaintiff & Resp. No.6 to 8 -
Orig. Defendants)

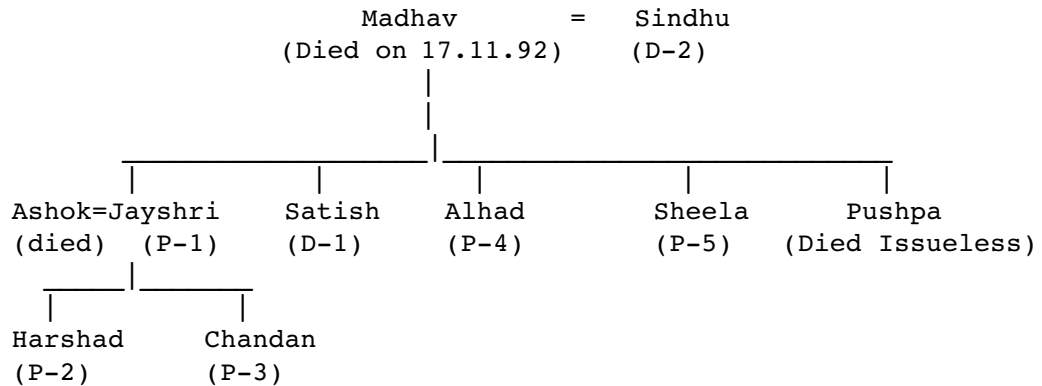
Mr. V.R. Dhorde, Advocate for the appellant
Mr. P.S. Shendurnikar, Advocate for respondent nos.1 to 5.
Mr. V.S. Kadam, Advocate for respondent nos.7 and 8
Respondent no.6 died and her L.Rs. are already on record as
respondent nos.1 to 5.

CORAM : M.T. JOSHI, J.
DATE : 30/04/2015

ORAL JUDGMENT:-

1. **Admit.** Heard finally, with consent of the parties.
2. Aggrieved by the clamping of temporary injunction against the present appellant, who was the defendant no.1 in the suit from alienating or creating any third party interest of 13 plots of gat no.79/3 of Pimprala, the present appeal is preferred.

3. The facts as can be gathered from the rival pleadings and the submissions would show that the present appellant / defendant no.1 and his mother Sindhu defendant no.2 being asked to have a partition and separate possession of the ancestral property. The genealogy between the parties is as under:-



4. Upon hearing both sides, it appears that there are in all four properties : two of the houses and one shop in possession of the plaintiffs while the present 13 plots are in possession of the present appellant-defendant.

. During the arguments, it has become an admitted fact that out of 21 plots, 8 plots have been already sold by the present appellant before clamping of the injunction. Except the plots all other properties are

in physical possession of the plaintiffs i.e. concerned respondent and the present plots are in possession of the present appellant/defendant no.1.

5. While plaintiffs plead that the plots are the joint family property purchased in the name of the defendant no.1 from the nucleus of the joint family property in the year 1966, it is the case of the present appellant/defendant no.1 that he himself has purchased the suit property alongwith two other vendors as is reflected in the sale deed. After division between them, the plots came to his share and it is his self-acquired property.

6. Learned trial Court in order to preserve the nature of the present property i.e. plots, has clamped the injunction.

7. Upon hearing both sides and considering the fact that two houses and one shop premises are in actual physical possession of the plaintiffs i.e. present respondent nos.1 to 5 and the present disputed suit property is yet to be held as to whether the same is purchased from the nucleus of the joint family property,

if at all ultimately the plaintiffs would succeed in equity, the present defendant no.1 would be very well entitled for claiming that in the partition, those plots be allotted to his share.

8. Learned counsel for the plaintiffs Mr. Shendurnikar, however, relies on the ratio of **"Maharwal Khewaji Trust (Regd.), Faridkot V. Baldev Dass" AIR 2005 S.C. 104** and **"Pralhad Jaganath Jawale and others Vs. Sitabai Chander Nikam and others" 2011(4) Mh.L.J. 137.**

. The ratio in the cases, cited supra would show that application of doctrine of lis pendens may become ineffective as the party may sometime entirely change the nature of suit property and ultimately, if defendant is found unjustifiably restrained by the temporary injunction, he can very well claim the damages.

9. In the present case, however, what we find is that the plaintiffs are in possession of two houses and one shop while the present suit property i.e. 13 plots, prima facie, are purchased by the present appellant. In the circumstances, if at all it is found on merit

that the field from which N.A. plots are carved, is also a joint family property, then, the defendant no.1 i.e. the present appellant can very well claim the equity. It is further found that though the injunction is clamped regarding 13 plots, then admittedly 8 plots are already alienated by the appellant.

10. In the circumstances, in my view, for the above reasons, the balance of convenience lies in favour of the appellant. In the result, the following order:-

11. The appeal is hereby allowed without any order as to costs.

12. The order dated 5/7/2014 passed by the 3rd Joint Civil Judge Senior Division, Jalgaon in Special Civil Suit No. 91 of 2013 (Exhibit 6) clamping injunction on the appellant is hereby set aside. Instead, the application filed before the trial Court is hereby dismissed without any order as to costs.

13. Consequently, Civil Application no. 8266 of 2014 seeking stay to the impugned order also stands disposed of.

14. Mr. Shendurnikar submits that the effect and operation of the present judgment and order be stayed for certain period.

15. At his request, the effect and operation of the present judgment and order is stayed till 02/07/2015.

[M.T. JOSHI]
JUDGE

arp/