

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**APPEAL FROM ORDER NO.111 OF 2014
WITH
CIVIL APPLICATION NO.11828 OF 2014**

Savindersingh s/o. Niranjansingh
Anad and ors. ..Appellants

Versus

Jasbirkaur w/o. Ranbirsingh
Gujral and ors. ..Respondents

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Mr.S.V.Adwant, advocate for appellants

Mr.A.D.Kasliwal, advocate for respondent nos.1 to
2

Mr.K.C.Sant, advocate for respondent no.4

Mr.S.V.Natu, advocate for respondent nos.7 to 19

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CORAM : M.T. JOSHI, J.

DATE : JUNE 19, 2015

PER COURT :

Heard both sides.

2] Aggrieved by the order of trial Court clamping
injunction in a suit for partition, original
defendants have preferred present appeal.

3] Hearing from both sides as well as the record would show that in the year 2014, the plaintiffs i.e. present respondent nos.1 and 2 along with defendant no.4/Respondent no.3 – Surjitkaur and defendant no.5/Respondent no.4 – Baljeetkaur had executed a registered relinquishment deed in favour of the present appellants/defendant nos.1 to 3 and their mother Simrat Kaur. Said mother has died.

4] It is a case of the plaintiffs that said relinquishment is got executed by playing fraud regarding which, detailed pleadings are made in the suit. Both sides submit that out of two suit properties, one is residential while other is non-residential property, as described in the plaint.

5] During pendency of the suit, an application for temporary injunction was filed by the plaintiffs in which, learned 3rd Joint Civil Judge

Senior Division has clamped injunction against the alienation or creating third party interests in the entire suit properties. Further, direction regarding deposit of 20% of the amount of rent out of the monthly rent being received by present appellants, as detailed in the said order, was issued. Learned Judge held that even if the case of playing fraud as regards the relinquishment deed, is not accepted, still, upon death of the mother, they would have their shares in the properties as the entire properties were left by her husband i.e. father of plaintiffs – daughters.

6] Upon hearing both sides, it is found that the suit may take its own time. In the meantime, complete ban on transfer would naturally cause inconvenience. Admittedly, there are two suit properties.

7] Mr.Adwant, learned counsel for the appellants, on instructions, submits that without prejudice to the claim and rights of his clients, the temporary injunction may be continued as regards the house property i.e. suit property – C, for three years, so that, within said period, the suit can be decided on merit. He further submits that in case, the suit is not decided within three years, he may be allowed to file an application for variation in clamping injunction.

8] Mr.Kasliwal, learned counsel for respondent nos.1 and 2 – original plaintiffs, submits that the the original plaintiffs would have 2/9th share in the suit properties.

9] Mr.Sant, learned counsel for respondent no.4 submits that respondent no.4 – defendant can also very well claim partition in the final decree and therefore, there would be addition in the shares.

10] Considering the overall facts on record and taking into consideration that the civil dispute may take its own time, in my view, following order would meet the ends of justice and equity :-

A] The Appeal from Order is partly allowed.

B] The order dated 14th July, 2014 passed by learned 3rd Joint Civil Judge, Senior Division, Aurangabad, clamping injunction regarding both the suit properties, is hereby set aside.

C] Instead, it is hereby directed that the injunction shall continue in the terms and conditions as directed by learned 3rd Civil Judge Senior Division as regards the house property i.e. suit property - C only, and deposit of 20% of the rent amount, as directed by learned 3rd Civil Judge Senior Division and the suit properties shall be

subject to the rule of *lis-pendens* as per the due procedure of law.

D] In case, any transfer regarding the suit shops is made by the appellants, they shall intimate about the transfer by filing true copies of the sale deed in the trial Court.

E] With these directions, the Appeal from Order stands disposed of without any order as to costs.

F] In view of disposal of the appeal, Civil Application does not survive and stands disposed of.

[M.T. JOSHI, J.]