

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**APPEAL FROM ORDER NO.110 OF 2015
WITH
CIVIL APPLICATION NO.16143/2015**

Narayandas S/o. Shankarlal Agrawal,
Age 62 years, Occu. Business,
R/o. B-5, Vandana Apartment,
Ramdas Peth, Nagpur.

**... Appellant.
(Original Plaintiff)**

VERSUS

1. Anita Wd/o. Ravindra Agrawal,
Age 51 years, Occu. Business,
2. Durgesh S/o. Ravindra Agrawal,
Age 18 years, Occu. Education
and Business,
3. Miss. Priyanka D/o. Ravindra Agrawal,
Age 22 years, Occu. Business,

All R/o. Shree Colony,
College Road, Jalna and having
office at S. No. 392, Datta Nagar,
Mastgarh, Jalna.

4. Mrs. Dr. Devika W/o. Dr. Aniket Lila,
Age 26 years, Occu. Service,
O/o. Physiotherapy Department,
Apollo Hospital, Jubilee Hill,
Hyderabad (Andhra Pradesh). = **RESPONDENTS
(orig.Defendants)**

(Respondent Nos.5 to 20 are
deleted as per Courts order
dated 16/12/2015.)

Mr.V.J.Dixit, Sr.Counsel, h/for Mr. L.V.Sangit,
Advocate for Appellant;

Mr.AS Bajaj, Adv. For Respondent Nos.1 to 4;

Respondent Nos.5 to 20 are deleted vide Court's order
dated 16.12.2015.

WITH

APPEAL FROM ORDER NO.121 OF 2015

WITH

CIVIL APPLICATION NO.1857/2016

1. Anita Wd/o. Ravindra Agrawal,
Age 51 years, Occ : Business,
R/o. Shree Colony, College Road,
Jalna.
2. Durgesh S/o. Ravindra Agrawal,
Age 18 years, Occ : Education &
Business, R/o. Shree Colony,
College Road, Jalna.
3. Priyanka D/o. Ravindra Agrawal,
Age 22 years, Occ : Business,
R/o. Shree Colony, College Road,
Jalna.
4. Dr. Devika W/o. Aniket Lila,
Age 26 Years, Occ : Service,
C/o. Physiotherapy Department,
Apollo Hospital, Jubilee Hill,
Hyderabad (Andhra Pradesh) ... **Appellants**
(Original Defendants
Nos. 1 to 4.)

VERSUS

1. Narayandas S/o. Shankarlal Agrawal,
Age 62 Years, Occu : Business,

R/o. B-5, Vandana Apartment,
Ramdas Peth, Nagpur. ... **(Original Plaintiff)**

2. Taradevi Wd/o. Ramgopalji Zunzunwala,
Age 74 years, Occ : Household,
C/o. Shriramji Nagarmalji Zunzunwala,
Baradari, Khamgaon, District Buldhana.
3. Vimaladevi Wd/o. Nandlalji Agrawal,
Age 72 years, Occ : Household,
C/o. At Vinayak Agencies,
1865, Agra Road, Opp. Police Station,
Dhule.
4. Shantadevi Wd/o. Pareshrumji Khaitan,
Age 70, years, Occ : Household,
R/o. Plot No. 52, Sahakar Nagar,
Near Office of Mr. Satish Chavan,
M.L.A., Aurangabad.
5. Shashikala Wd/o. Pradeepkumarji Bansal,
Age 67 years, Occ : Household,
R/o. Flat No. 301, Tarun Vihar,
St. Paul School Lane,
Near Bhavan's College, Defence Colony,
Sainikpuri, Secunderabad, A.P.
6. Nirmaladevi Wd/o. Sureshji Agrawal,
Age 63 years, Occ : Household,
R/o. 34, Royal Residency,
Near Piplyahana, Chaurasta,
Indore (Madhya Pradesh).
7. Mangala W/o. Anilkumarji Gupta,
Age 60 years, Occ : Household,
R/o. Meghdoot Co-operative Housing,
Society, 1st Floor, Canal Road, Nagpur.
8. Shobha W/o. Ashokji Jindal,
Age 53 years, Occ : Household,
R/o. Salasar Vihar Colony,
Row House No. 32,
Wathawad Ring Road, Nagpur.

9. Shakuntala w/o. Nandkumarji Gupta,
Age 67 years, Occ : Household,
R/o. Flat No. 201, 2nd Floor,
Shrinivas Apartment, 3-6-467/1,
Street-I, Hardikar Baug,
Himayatnagar, Hyderabad,
Andhra Pradesh.
10. Vasudeo S/o. Shankarlalji Agrawal,
Age 50 years, Occ : Business,
R/o. Plot No. 3, "Suraj",
Opp. LAD College, Shivaji Nagar,
Nagpur.
11. Manish S/o. Ramnarayan Rathi,
Age 42 years, Occ : Business,
R/o. Shree Colony, College Road,
Jalna.
12. Shubhada W/o. Vijay Deshmukh,
Age 47 years, Occ : Service,
R/o. Bhagyanagar, Jalna.
13. Vijay S/o. Narsinh Deshmukh,
Age 50 years, Occ : Service,
R/o. Bhagyanagar, Jalna.
14. Ramesh S/o. Rambhau Sose,
Age 50 years, Occ : Business,
R/o. Shrikrushna Nagar,
MHADA Colony, Jalna.
15. Tukaram S/o. Gangaram Malusare,
Age 48 years, Occ : Service,
R/o. Plot No. 14, Vaibhav Colony,
New Mondha Road, Jalna.
16. Atul S/o. Ramchandra Ganatra,
Age 40 years, Occ : Business,
R/o. Ajanta Nagar, Jalna.
17. Anil S/o. Pannalal Agrawal,
Age 50 years, Occ : Business,
R/o. Opp. Police Station,

Kadrapad, Jalan.

**...Respondents
(Orig. Defendants)**

Mr.AS Bajaj, Advocate for appellants;

Mr.VJ Dixit, Sr.Counsel, h/for Mr. LV Sangit, Adv.
For Respondent No.1-Caveator;

Mr. R.R.Shaikh, Adv. For Resp.Nos.2 to 4;

Mr. AS Barlota, Adv. For Resp.No.6;

Mr.Ghulam Mustafa, Adv. h/for Mr. U.D.Salvi, Adv. For
Resp.No. 8;

Mr.P.D.Kale, Adv. For Resp.No.10;

Respondent Nos. 5,7,9, 11 to 17 are served.

CORAM : P.R.BORA, J.

DATE : 9th August,2016.

JUDGMENT:

1) Heard. **Admit.** Taken up for final
disposal, by consent of parties.

2) Since both the appeals are filed against
order dated 21st September, 2015 passed by 2nd
Joint Civil Judge, Senior Division, Jalna, below
Exhibit-5 in Special Civil Suit No. 101 of 2012,
both the appeals are heard together and I deem it
appropriate to decide these appeals by a common

reasoning.

3) The aforesaid Special Civil suit is filed for declaration of title, partition, separate possession, rendition of accounts, cancellation of registered sale-deeds etc. In the said Suit, plaintiff had filed an application under Order 39 Rule 1 & 2 of Code of Civil Procedure, 1908 (for short, C.P.C.) praying for an order of injunction restraining defendant Nos.1 to 3 therein from creating any third party interest or alienating the suit properties mentioned in Schedule-A, B and C annexed to the Plaint.

4) The application was strongly resisted by defendant Nos.1 to 3. The learned Civil Judge, vide the impugned order, has partly allowed the said application and thereby has temporarily restrained defendant Nos.1 to 3 from alienating the suit properties – A-1 and A-2, i.e. CTS Nos.9882/1 to 9882/10 and CTS Nos.9882/12 to

9882/26 till final decision of the suit. Aggrieved by the order so passed, the plaintiff and deft.Nos.1 to 3, both have filed the appeals before this Court. Appeal from Order No.110/2015 is filed by the original plaintiff; whereas Appeal from Order No.121/2015 is filed by original deft.Nos.1 to 3. For the sake of convenience, the appellants and the respondents in both the appeals are referred with their nomenclature in the Special Civil Suit, i.e. as plaintiff and the defendants.

5) It is the grievance of the plaintiff that the trial Court has erred in allowing the application below Exhibit-5 in part though a very strong *prima facie* case was made out by the plaintiff requiring an order of injunction in toto thereby restraining the defendants Nos.1 to 3 from creating any third party interest or from alienating the suit properties mentioned in Schedule A, B and C of the Plaint.

6) As against it, deft.Nos.1 to 3 have come out with a case that the Trial Court has committed an error in allowing the application, may be in part, when no such case was made out for granting any such injunction and when the action initiated by the plaintiff was hopelessly time barred.

7) Shri Dixit, learned Sr. Counsel appearing for the plaintiff submitted that ample prima facie evidence has been placed on record by the plaintiff evidencing that the properties as are mentioned in Schedule A, B and C are the joint family properties, though may be in the name of and in possession of deft.Nos.1 to 3. The learned Sr. Counsel further submitted that in earlier Civil Suit No.62/1980 (Special Civil Suit No.88/1981) filed by mother of the plaintiff against other family members, for partition and possession of CTS No.392 and Gajanan Ginning Factory, joint written statement was filed by plaintiff No.1 – Narayan and deceased Ravindra,

wherein it was clearly admitted that Survey No.392 was an ancestral property.

. The learned Sr. Counsel further submitted that subsequently, Survey No.392 has been allotted CTS No.9882. The learned Sr. Counsel further submitted that deceased Ravindra converted the aforesaid land for non-agricultural (N.A.) use and had sold the residential plots in the said CTS number and has amassed huge wealth out of the sale of the said plots.

. The learned Sr.Counsel further submitted that from the funds received out of sale of joint family properties, deceased Ravindra has acquired another properties, and as such, all the said properties are, in fact, the properties of Hindu Undivided Family (HUF) comprising of the plaintiff and defendant Nos. 1 to 13.

. The learned Sr.Counsel further submitted that in respect of the properties described in Schedule A, B and C, sufficient prima facie evidence is placed on record of the Trial Court, from which it can be reasonably inferred that all

such properties, though may be standing in the sole name of deceased Ravindra, and may be now in possession of the legal heirs of deceased Ravindra are, in fact, the joint family properties and the plaintiff is entitled for his share in the said properties.

. The learned Counsel further submitted that in spite of such evidence on record, the learned Trial Court has declined to accept the request of the plaintiff to restrain deft.Nos.1 to 3 from creating any third party interest in the properties as are mentioned in Schedule A, B and C and to alienate any of those properties till decision of the suit filed by the plaintiff.

8) Shri Bajaj, learned counsel appearing for deft.Nos. 1 to 3, who are the appellants in Appeal from Order No.120/2015, submitted that the property CTS No.392 was sold by deceased Shankarlal to deceased Ravindra, by way of registered sale deed in the year 1985 and since then, deceased Ravindra was in ownership and

possession of the said property as the exclusive owner of the said property. The learned counsel further submitted that till deceased Ravindra was alive, the plaintiff did never raise any such plea that the aforesaid property was a joint family property and that he was having any share in the said property. The learned counsel further submitted that it is only after death of Ravindra, a belated claim has been made by the plaintiff and the action so initiated by him is hopelessly time barred.

. The learned counsel further submitted that deft.Nos. 1 to 3 have placed on record sufficient evidence to show that CTS No.392 was not an ancestral property, but was self-acquired property of deceased Shankarlal and he was having every right to dispose of the said property according to his will. The learned Counsel further submitted that at the relevant time, deceased Shankarlal was in financial difficulties and was, therefore, required to sell the aforesaid property to deceased Ravindra. The

learned counsel further submitted that merely on the basis of one statement in the written statement filed in an earlier suit, no such conclusion can be drawn that Survey No.392 was a joint family property. The learned Counsel further submitted that in the concerned Civil Suit, the aforesaid property, i.e. CTS No.392 was included only with an intention to bring the jurisdiction for filing the suit at Aurangabad when all other properties were situated at Mehkar.

. The learned Counsel further submitted that defendant No.13 – Vasudeo, the real brother of plaintiff No.1 – Narayan and deceased Ravindra has sworn an affidavit contending therein in clear terms that the properties which the plaintiff is claiming to be the joint family properties, are the self-acquired properties of deceased Ravindra.

. The learned counsel further submitted that the plaintiff has not placed on record any evidence so as to draw even a prima facie

inference that the properties described in Schedule A, B and C annexed to the plaint are acquired out of nucleus of the joint family property. The learned counsel submitted that way back in 1974, the plaintiff No.1 had shifted to Nagpur and had started his own business and was having no concern with the business and properties at Aurangabad.

. The learned Counsel further submitted that in the earlier suit filed by plaintiff bearing Special Civil Suit No.33/2014, he has not even whispered about the properties referred to in the present suit and as such, the present suit is barred under Order II Rule 2 of Civil Procedure Code.

. The learned Counsel further submitted that the learned Trial Court, merely on the basis of one statement of deceased Ravindra in the Written Statement filed in Special Civil Suit No. 88/1981, has drawn an inference that the property CTS No.392 may be a joint family property and on the basis of such erroneous inference, has passed

the impugned order.

. The learned Counsel placing his reliance on the two judgments of the Hon'ble Apex Court, first in the case of Kishorsingh Ratansingh Jadeja Vs. Maruti corporation and Ors. - (2009) SCC 229; and other in the case of Mandali Ranganna and Ors. Vs. T. Ramachandra and Ors. - (2008) 11 SCC 1., submitted that the order of injunction so passed by the learned Trial Court cannot be sustained, when admittedly the so-called rights asserted by the plaintiff after the long period of about 30 years. The learned Counsel, therefore, prayed for setting aside the impugned order.

9) Shri Ghulam Mustafa, learned Counsel appearing for Respondent No.8, adopted the arguments advanced by Shri Dixit, learned Sr.Counsel. The learned counsel, relying upon the judgment of this court in the case of Priya Prakash Deshmukh Vs. Gajanan Bagwantrao Deshmukh and Ors. - 2016(2) Mh.L.J. 143, submitted that

the learned Trial Court ought to have protected the interest of the plaintiff as well as the respondents, who are also claiming share in the suit properties by restraining the defendant Nos.1 to 3 from creating any third party interest in all the suit properties or from alienating the said properties.

10) Shri Barlota, learned counsel appearing for Respondent No.6, adopted the arguments advanced by Shri Bajaj, learned counsel appearing for defendant Nos. 1 to 3.

11) I have carefully considered the submissions advanced by learned Counsel appearing for the respective parties. I have also perused the voluminous documents placed on record by the parties and the order passed by the Trial court impugned in the present appeals.

12) Plaintiff Narayan Shankarlal Agrawal is claiming 1/11th share in the properties described

in Scheduled A, B and C annexed to the plaint. According to the plaintiff, the properties mentioned in the aforesaid Schedule are the joint family properties. As has been contended in the suit plaint, land Survey No.392, which was an Inam land, was originally possessed by his late grand-father viz. Balmukund and after death of his grand-father, in the partition, which took place between his father Shankarlal and two brothers of Shankarlal, the said Survey No.392 came to the share of Shankarlal. It is further contended that the businesses and the factories/industries being run at Jalna, though were being looked after by deceased Ravindra, in fact, were joint family businesses. It is further contended that the properties as are mentioned in Scheduled A B and C were purchased from the funds of the joint family property and from the profits earned out of the joint family businesses.

13) The contentions so raised in the suit

plaint are denied by defendant Nos.1 to 3. According to defendant Nos.1 to 3, none of the properties described in Schedule A B and C annexed to the plaint is joint family property. According to the defendants, the subject properties are self-acquired properties of deceased Ravindra and the plaintiff as well as defendants Nos.5 to 13 are no way concerned with the properties, neither they can claim any share in the said properties. It is the further contention of defendant Nos. 1 to 3 that the land Survey No.392 was sold by deceased Shankarlal to deceased Ravindra by way of registered sale deed for the consideration of Rs.20,000/- and since then, the said property was exclusively owned and possessed by deceased Ravindra. It is the further contention of defendant Nos.1 to 3 that deceased Ravindra alone had developed the said property and the businesses at Jalna.

14) After having considered the rival contentions raised by the plaintiff and the

defendants, it is difficult to record any prima facie finding as about the status of the properties mentioned in Schedule A, B and C annexed to the plaint; whether the said properties are undivided properties of the joint family comprising of plaintiff and defendant Nos.1 to 13 or are the self-acquired properties of deceased Ravindra. Though it is the assertion of the plaintiff that the properties as are mentioned in the Schedule A, B and C are acquired from the nucleus of the joint family property, the said fact can only be established by bringing on record all necessary and cogent evidence therefor. This is possible only during the trial of the suit. Such evidence also must withstand in the cross-examination. In so far as land Survey No.392 is concerned, which stands converted into CTS No.9882 and which has been now divided into various residential plots, there is at least some evidence available from which an inference is possible that the said property may be a joint family property. However, the said fact also

will have to be legally proved. Whether the other properties are purchased from the nucleus of joint family property will also be possible only by bringing on record all necessary evidence therefor and it may be difficult to record any prima facie finding in that regard. In the circumstances, it appears to me that the learned Trial Court has rightly struck the balance by partly allowing the injunction application filed by the plaintiff. Otherwise also, grant of injunction is an equitable relief. The plaintiff, who did not initiate any action for a quite long time and allowed deceased Ravindra to deal with the properties exclusively, cannot now insist for an order that the legal heirs of deceased Ravindra, i.e. defendants Nos.1 to 3, be restrained from dealing with each and every of said properties. I am however, not oblivious of the fact that refusal of injunction in toto would seriously prejudice the interest of the plaintiff. Thus, the interest of the plaintiff also needs to be adequately protected. According

to me, the learned Trial Judge has made a possible endeavour to protect the interest of both; the plaintiff and the defendants, by passing the impugned order. I, therefore, do not see any reason to cause any interference in the order so passed. It is, however, expected that defendant Nos. 1 to 3 in the event enter into any transaction in respect of the properties mentioned in Schedule A, B and C annexed to the plaint, will make aware the other side to the said transaction about the present litigation.

15) In the result, the following order, -

ORDER

i) Both the Appeals from Order are dismissed. Pending Civil Applications, if any, stand disposed of

sd/-
(P.R.BORA)
JUDGE

bdv/
fldr 19.8.2016