

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.61 OF 2014
WITH
CIVIL APPLICATION NO.85 OF 2014
IN
APPEAL FROM ORDER NO.61 OF 2014**

Smt. Manibai Ganpat Sutar & Ors. ...Appellants

Versus

Krishna Ganpat Sutar and Ors. ...Respondents

.....

Mr. K.S. Dewal with Mr. J.M. Joshi i/b. Mr. Roshan Tanna for the Appellants.

Mr. Prasad Dani, senior counsel with Mr. Amol Mhatre for the Respondents.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 28th JUNE, 2017.**

JUDGMENT:

Rule. Respondents waive service. By consent, Rule is made returnable forthwith and the Petition is taken up for hearing and final disposal.

2. The Appellants herein have challenged the order dated 30th December, 2013 whereby the learned Civil Judge, Senior Division, Thane has dismissed the application for injunction filed in Special Civil Suit No.423 of 2008.

3. I have perused the pleadings of the respective parties and considered the submissions advanced by the learned counsels for the respective parties.

4. The Appellant No.1 is the widow and the Appellant Nos.2 to 9 are children of Ganpat Sutar. The Respondent No.2 is the first wife and the Respondent Nos.1, 3 and 4 are the children of Ganpat Sutar from the first marriage. The dispute in the present case is in respect of the properties bearing survey No.136, Hissa Nos. 2 and 9 situated at village Khairne, and the property bearing Gut No.263(P), at village -Turbhe and Survey No.6, Hissa No.8 at Village Vashi, which were originally owned by said Ganpat Sutar. Ganpat Sutar had formed a partnership firm under the name and style of M/s. Sutar and Company with Appellant Nos.2, 8 and the Respondent No.1 as its partners. After the death of Ganpat Sutar the partnership was reconstituted and his widow Manibai Sutar was added as a partner of the firm. Subsequently, the Appellant No.3-Shamkant Ganpat Sutar, Appellant No.3, Ramakant and Shashikant were also admitted as partners in the said Firm.

5. The grievance of the Appellants was that the Respondent No.1, who had assumed the position of Karta, had indulged in several illegal activities such as withdrawal and transfer of funds from the accounts of partnership firm, purchase of property in his name and on the name of his wife and children and siphoning money of the partnership firm by forging signatures of partners, misappropriation of partnership funds, etc. The Appellants apprehended that the Respondent No.1 was intending to transfer the property bearing Plot No.7A, Sector 9 situated at Vashi, Navi Mumbai in his personal name. The Appellants therefore, filed Special Civil Suit No.712 of 2007 for declaration, accounts and injunction in respect of the said property. The said suit is admittedly referred to the Arbitration and the same is pending.

6. The Appellants have claimed that subject matter of the present suit is the joint family properties of the Appellants and the Respondents and that they have entitled share therein. The Appellants have therefore called upon the Respondents to render true and correct accounts of M/s. Sutar and Co. and also demanded partition by metes and bounds of the immovable properties. The Respondents did not concede to the request and the same necessitated filing of the Special

Civil Suit No.423 of 2008. The Appellants claim that the Respondents have been misappropriating the funds and have used the property for their personal gain, whereas the Respondents have claimed that the Appellants have not disclosed several properties and other immovable assets held by them. It is contended that the Appellant Nos.2, 3 and 8 are residing separately since 1993 and the Respondent No.1 had purchased several properties by obtaining loan from the Bank as well as financial institutions. The said properties are self acquired properties and cannot be treated as Joint Hindu Family properties. It is further stated that some time in the year 1993, Ganpat Sutar had partitioned the property and as such the Appellants are not entitled to seek partition of the properties.

7. The dispute in the present proceedings is between the family members. The previous suit was being Special Civil Suit No.712 of 2007 is pending arbitration. Besides the issue of oral partition cannot be decided at this stage and until such adjudication it is necessary to preserve status quo in respect of the properties in dispute so as to prevent perpetration of wrong.

8. In this regard, it is also to be noted that by order dated

16.6.2008 the learned Judge had directed the parties to maintain status quo in respect of the suit property. The status quo order continues to operate till date.

9. Mr. Dani, the learned senior counsel for the Respondents, on instructions makes a statement that without prejudice to the rights of the Respondents, the Respondents will not transfer, alienate or create third party right in respect of the suit property till the disposal of the suit. The statement is accepted.

10. In the light of the above statement and also considering the fact that the issues involved in the suit require adjudication on merits, in my considered view the appeal can be disposed of with directions to the parties to maintain status quo till the disposal of the suit.

11. The Appeal from Order stands disposed of in above terms.

12. The learned Trial Judge shall endeavour to dispose of the civil suit as expeditiously as possible and preferrably within a period of one year from the date of framing of the issues.

13. It is made clear that this Court has not gone into the merits of the matter and all the points and contentions of the respective parties are expressly kept open.

14. In view of disposal of the Appeal from Order, the Civil Application does not survive and hence, disposed of.

(ANUJA PRABHUDESSAI, J.)