

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER No. 956 OF 2016
WITH
CIVIL APPLICATION NO. 1202 OF 2016**

Devram Madhav Gawade & Ors. ... Appellants/Applicants

Vs.

Manoj @ Subhash Parshuram Gavade
& Ors. ... Respondents

Mr. G.S. Godbole i/b. Mr. Drupad S. Patil, Advocate for the appellants/applicants.

Mr. S.M. Gorwadkar, Senior Advocate i/b. Mr. Chetan R. Nagare, Advocate for respondent no. 1.

Mr. Vaibhav V. Ugle, Advocate for respondent no. 2.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 29th SEPTEMBER, 2017

P.C.:

This Appeal from Order is directed against the order dated 9th August, 2016 passed below Exhibit 5 by the learned 8th Joint Civil Judge Senior Division, Pune in Special Civil Suit No. 622 of 2016. The suit is filed for partition of the suit property and also for relief of declaration. The trial Judge has enjoined the defendants temporarily from creating third party interest in the suit properties till the disposal of the suit. In the plaint, the suit properties are in two parts, i.e., 1(a) and 1(b). As per the case of the plaintiff/respondent no. 1, properties described in para no. 1(a) in the plaint are the ancestral properties

and properties 1(b) are the properties which are purchased/acquired out of sale proceeds or benefits or profits from the income of the joint family property. Therefore, the plaintiff claims undivided right in the properties described in para nos. 1(a) and 1(b) of the plaint.

2. On hearing the submissions of the learned counsel for the appellants/defendants, it is found that at this stage, without prejudice, the appellants do not want to challenge the order of injunction against the properties described in para 1(a) of the plaint. However, in respect of properties mentioned in para 1(b) of the plaint, the appellants/defendants have serious challenge, as it is contended that all the properties are self acquired properties of the appellants/defendants. It is contended that some properties are acquired out of the income of the defendants, which is earned out of service or from their business. It is further contended that in the written statement, the details of the acquired properties in para 1(b) of the plaint are specifically mentioned, however, in the impugned order, the learned trial Judge has not at all disclosed these contentions raised by the defendants. Thus, it appears that the learned trial Judge has discussed the case only one sided without touching the aspect of the income and self-acquired properties of the

defendants falling under 1(b). The learned counsel has further submitted that the defendants, in support of their contentions, have produced number of documents at the hearing of Application Exhibit 5, however, these documents are not taken into account.

3. The learned counsel for the respondent/plaintiff has submitted that the plaintiff has also produced many documents in support of the averments in the plaint on the point of joint ownership of all the properties.

4. After considering these submissions and after going through the impugned order, it is found that the learned trial Judge has not dealt with the contentions raised by the defendants in respect of properties mentioned in para 1(b) of the plaint. Therefore, without prejudice, as the appellants are not pressing the Appeal in respect of the properties described in para no. 1(a) of the plaint, I modify the impugned order as follows:

- (i) The defendants are temporarily restrained from creating third party interest in the suit properties described in para 1(a) of the plaint till the disposal of the suit.
- (ii) In respect of properties mentioned in para no. 1(b) of the

plaint, the Application Exhibit 5 is reopened and the learned trial Judge after considering the averments, pleading in the plaint and also the documents filed by both the parties, to decide whether any order of injunction is to be passed in respect of the properties mentioned in para no. 1(b) of the plaint.

- (iii) Parties to cooperate the trial Court and the trial Court to decide this part of Exhibit 5 on or before 24th November, 2017.

5. Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)