

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 843 OF 2014

Rajendra S/o Nivarati Lahade,
Age : 51 Years, Occu. Agriculturist,
R/o. Vikas Nagar, Tal. Latur,
Dist. Latur.

..PETITIONER
(Orig. Plaintiff)

VERSUS

1. Janak S/o Nivari Lahade,
Age : 57 Years, Occ. Agriculture,
R/o. Waswadi, Barshi Road,
Latur.
2. Jalindar S/o Nivarati Lahade,
Age : 55 Years, Occ. Agriculture
3. Chaturbhuj S/o Nivarati Lahade,
Age : 53 Years, Occu. Agriculture
4. Shamsunder S/o Nivarti Lahade,
Age : 45 Years, Occ. Agriculture,
5. Sou. Kondabai W/o Sandipan Like,
Age : 61 Years, Occ. Household,

All R/o. Rui, Taluka and District
Latur.
6. Sou. Laxmibai W/o Sudam Gadekar,
Age : 48 Years, Occ. Household,
R/o. Nandgaon Tal. Ambejogai,
District Beed.
7. Sou. Sanjeevanibai W/o Arjun Bhure,
Age : 46 Years, Occu. Household,
R/o. Shera Tq. Renapur.
8. Sou. Kiskindabai W/o Janak Lahade,
Age : 48 years, Occ. Household,
R/o. Waswadi, Barshi Road,
Latur Dist. Latur.

..RESPONDENTS
(Orig. Defendants)

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Advocate for the Petitioner : Mr. N. P. Patil Jamalpurkar
Advocate for respondent No.1 : Mr. C.R.Deshpande
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CORAM : T.V. NALWADE J.
DATE : 11-02-2019.

JUDGMENT(PER T.V. NALWADE, J] :-

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.
2. The proceeding is filed to challenge the decision given by the learned District Judge-3, Latur, in Misc. Civil Appeal No. 8/2010. The learned District Judge has allowed and has set-aside the order of temporary injunction made by the learned Civil Judge, Junior Division, Latur in Regular Civil Suit No. 39/2009.
3. The said suit is filed by the present petitioner for relief of partition and possession of Joint Hindu Family property. In the said suit, defence is taken by the defendants that some properties are their self acquired properties and they are not Joint Hindu Family properties. The submissions made show that defendant No.1 of this suit has filed separate suit for relief of partition. In the said suit, the properties, which according to him, are self acquired properties, were not initially mentioned as subject matter of the dispute, but after giving direction by the Court, those properties also came to be added as subject matter of the suit and so the same properties are for consideration in both the

partition suits.

4. The learned District Judge has set-aside the order of trial Court by observing that there is no specific pleading with regard to the existence of nucleus and income from nucleus from which the property could have been purchased by the defendants. There is the pleading which can be seen from the order of learned District Judge No.3 itself that all the properties are Joint Hindu Family properties and the said properties are purchased in the name of defendant Nos. 1 and 8, and they are also Joint Hindu Family properties. Though it is true that there is no presumption that every property is Joint Hindu Family property though there is presumption of jointness of Hindu Family, when there are other properties of Joint Hindu Family in addition to the properties which are standing separately in the names of some members of Joint Hindu Family, the Court cannot ignore the circumstances of existence of some properties which are admittedly Joint Hindu Family property and also the circumstances that other properties were purchased subsequently. In such circumstances, it is always desirable to see that the properties are protected till the decision of the suit. This Court had also granted interim relief in favour of the plaintiff/petitioner to prevent the defendants from alienating the said properties.

5. In view of nature of dispute, this Court holds that interim relief granted by this Court on 05.02.2014 can be continued and direction can

be given to trial Court to see that both the suits are expeditiously disposed of. So, the petition is allowed. The Interim Relief granted by this Court on 05.2.2014 is continued for a period of six months and during this period, the trial Court is to see that both the suits are disposed of. Both the sides are expected to co-operate to the trial Court.

6. Rule made absolute in above terms.

7. The observations are for the purpose of present proceeding and the learned trial Court Judge is not to get influenced by these observations.

[T.V. NALAWADE]
JUDGE

YSK/