

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

**SECOND APPEAL NO. 53 OF 2015  
WITH  
CIVIL APPLICATION NO. 108 OF 2015**

|                                      |                 |
|--------------------------------------|-----------------|
| Tukaram Laxman Patil                 | ... Appellant   |
| Versus                               |                 |
| Ganpati Bapu Desai and others        | ... Respondents |
| .....                                |                 |
| Mr. V. S. Talkute for the Appellant. |                 |
| Mr. Drupad S. Patil for Respondents. |                 |
| .....                                |                 |

**CORAM : SANDEEP K. SHINDE, J.**

**DATE : 26<sup>th</sup> FEBRUARY, 2019.**

**P. C.:**

1. Heard learned Counsel for the parties.
2. I will call and refer the parties as per their status in the plaint.
3. The appellant was defendant No.1 in the suit for partition being Regular Civil Suit No. 19 of 1999. The suit property is house property. The suit was filed in the year 1999 seeking partition of the suit house, which defendant No.2 (co-sharer) alienated to the defendant No.1. The suit was dismissed by judgment and order dated 30<sup>th</sup> December, 2009, which was carried in Regular Civil Appeal No.18 of 2010. The Regular Civil

Appeal No.18 of 2010 was allowed and the following order was passed:

- “1. Appeal is hereby allowed with costs.*
- 2. Judgment and decree passed in Reg.Civil Suit No.19/1999 by Jt.Civil Judge Jr.Dn., Panhala is set aside and it is substituted as follows.*
  - (i) Suit is decreed.*
  - (ii) Plaintiff Nos.1,2 and 4, and defendant No.2 are entitled to have 1/4<sup>th</sup> share each and plaintiff No.3 B, 3 C and 3 D are entitled to have 1/5<sup>th</sup> share jointly and its separate possession in the suit property by effecting partition by metes and bounds.*
  - (iii) It is hereby made clear that, the share of defendant No.2 would be allotted to defendant No.1 while executing the decree of partition.*
  - (iv) Court Commissioner be appointed to suggest the partition of suit property by metes and bounds.*
  - (v) Decree be drawn accordingly.”*

It is against this decree the defendant No.1 (purchaser) has preferred this appeal.

4. It may be stated that, pending suit, the plaintiff amended the plaint and claimed that other joint family properties including the four houses were partitioned amongst the members of the joint family in the year 1981 excluding the suit property.

5. The trial Court as well as the appellate Court rendered a finding of fact that the appellant-purchaser, has not proved that the suit property was sold to him by the defendant No.2 for a legal necessity.

6. Learned Counsel for the appellant submitted that the appellant as third party purchaser of the joint family property has right to file suit for partition not only in respect of the property or part thereof purchased by him but also to seek general partition and until such a suit is brought by the appellant, decree impugned herein can't be executed. He has relied on judgment of Division Bench of this Court in the case of Patilbua Pandu Landge Vs. Sadashiv Vithoba Kamble and ors. (Second Appeal No.808 of 1967), decided on 8<sup>th</sup> July, 1975.

7. In the cited judgment the following question falls for its consideration:

*“When a co-parcener of a joint Hindu family alienates a specific item of the joint family property and puts the stranger purchaser in possession, if the non-alienating co-parceners bring a suit for partition of their undivided interest in that specific property on the ground that the alienation does not bind their interest, if the alienation is held to be not binding on the non-*

*alienating coparceners, can an objection by the purchaser to such a suit prevail on the ground that the non-alienating co-parceners must bring a general suit for partition comprising all the property of the joint family and a suit by them for partition of the specific property alone is not maintainable”.*

This issue has been answered by the Division Bench in paragraph 21, which reads as under:

*“..... We also add that while decreeing the suit of the non-alienating coparceners for partition of the specific property, where it is necessary that equities in favour of the purchaser will have to be worked out in a general suit for partition of all the joint family property, a direction should be added that the execution of the decree in favour of the non-alienating coparceners should remain stayed for a specific period during which period the purchaser may file a suit for general partition and if such a suit is filed within the prescribed period, the stay of the execution of the decree should last until the disposal of the purchaser's suit for partition, but if such a suit for general partition is not brought by the purchaser within the specific period, then the decree in favour of the non-alienating coparceners should be executed.”*

8. In the case in hand the appellate Court has passed the decree in the following terms :

“.....  
 (i) *Suit is decreed.*

(ii) *Plaintiff Nos.1,2 and 4, and defendant No.2 are entitled to have 1/4<sup>th</sup> share each and plaintiff No.3 B, 3 C and 3 D are entitled to have 1/5<sup>th</sup> share jointly and its separate possession in the suit property by effecting partition by metes and bounds.*  
 .....

9. Thus, in the case in hand the suit brought by the non-alienating co-parceners seeking partition of the specific property has been decreed and share of defendant No.2 (who alienated the suit property to the defendant No.1) was ordered to be adjusted in favour of defendant No.1 (purchaser of joint family property). However, in view of the law laid down by the Division Bench of this Court (supra), it is necessary to issue directions that the execution of decree passed in Regular Civil Appeal No. 18 of 2010 be stayed for a period of 90 days and within this period the appellant, purchaser may institute suit for general partition. If such a suit is filed within 90 days, the execution of decree passed in Regular Civil Appeal No.18 of 2010 (impugned herein) shall not be executed and remain stayed until disposal of appellant's (purchaser) suit for partition. It is made clear that if the appellant (purchaser) does not file suit for general partition within 90 days, then the decree passed in Regular Civil Appeal No.18 of 2010 shall be executed.

10. Hence, the following order :

- (i) Execution of decree passed in Regular Civil Appeal No. 18 of 2010 is stayed for a period of 90 days from today.
- (ii) Within 90 days from today, the appellant-purchaser may institute suit for general partition against the respondents.
- (iii) If such a suit is filed within 90 days from today, the execution of decree in Regular Civil Appeal No.18 of 2010 shall be stayed until the disposal of appellant's suit for partition.
- (iv) If the appellant does not institute suit for partition within 90 days from today, the decree passed in Regular Civil Appeal No.18 of 2010 shall be executed.
- (v) The appeal is disposed of in the aforesaid terms. Civil application No. 108 of 2015 is disposed of.

**( SANDEEP K. SHINDE, J. )**