

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**903 APPEAL FROM ORDER NO.46 OF 2022
WITH
CA/11276/2022 IN AO/46/2022**

**SURESH BAPURAO MHASKE
VERSUS
ONKAR BABASAHEB MHASKE THROUGH NATURAL GUARDIAN
POOJA BABASAHEB MHASKE AND OTHERS**

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Advocate for Appellant: Mr. Madkar Deshbhushan P.

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AND

...

**904 APEAL FROM ORDER NO.59 OF 2022
WITH
CA/13584/2022 IN AO/59/2022**

**BABASAHEB BAPURAO MHASKE AND OTHERS
VERSUS
ONKAR BABASAHEB MHASKE THROUGH NATURAL GUARDIAN
POOJA BABASAHEB MHASKE AND OTHERS**

...

Advocate for Appellant: Mr. Joshi Rahul G.

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CORAM: ARUN R. PEDNEKER, J.

DATE: 10th NOVEMBER, 2022

PER COURT:

1. The present Appeals from Order arise out of the suit for partition and separate possession filed by the wife and sons of defendant no.1 of the properties mentioned in the plaint. The plaintiffs also filed an application for

injunction restraining the defendants from alienating or creating any third party interest in the suit properties. The said application is allowed by the trial court by order dated 19.01.2022, which is impugned in the present appeal.

2. Heard learned counsel for the appellants.

3. The trial court, by the impugned order held that, prima facie, the suit properties are joint family properties and it is yet to be established, whether the suit properties are purchased from the nucleus of the ancestral joint family properties or from the personal income of defendant no.2 – father-in-law of the plaintiff no.3.

4. Defendant no.2 – father-in-law of the plaintiff no.3 has admitted that the property mentioned at Serial No.1 in scheduled-I of the plaint is the joint family property. However, he disputed the remaining 3 properties mentioned in

the Scheduled-I to be the joint family properties and contends that the same has been acquired through his personal income as he was in service of a private company.

5. Defendant no.2 contends that the Hon'ble High Court in Writ Petition No.7306 of 2020 has prima facie by order dated 24.11.2021 in a proceeding arising out of a suit filed for injunction by defendant no.2 against plaintiff no.1 and others, held that the house property described in schedule-II of the plaint belongs to defendant no.2.

6. In the facts of the case, that the appellants herein are old and continuous restrain on all the suit properties some of which could be the defendants personal properties would seriously prejudice their rights in raising funds for medical and other expenses.

7. Thus, I hereby direct the trial court to decide the suit as expeditiously as possible and

in any event within one (01) year from today without being influenced by any observations made in this judgment. It is clarified that there is no interference with the order of injunction passed by the trial court. Both these Appeals from Order are disposed of in aforesaid terms.

8. In view of disposal of the Appeals from Order, pending Civil Applications are also disposed of.

[ARUN R. PEDNEKER, J.]

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