

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

**APPEAL FROM ORDER NO.52 OF 2018
AND
CIVIL APPLICATION NO.9988 OF 2018**

Mahaveer Lalitkumar Bora,
Age : 61 years, Occ. Housewife,
r/o. Nilesh Bungalow, Gurudatta Colony,
Old Malegaon Road, Chalisgaon,
Tq. Chalisgaon, Dist.Jalgaon

..Appellant

Vs.

1. Sau. Surekha Vikramrao Chavhan,
Age:61 years, Occ. Housewife,
r/o. Nilesh Bungalow, Gurudatta Colony,
Old Malgaon Raod, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon
2. Vijay Bhikanrao Deshmukh (dead)
Through Legal heirs
- 2A. Ritesh Vijay Deshmukh
Age:36 years, Occ. Service,
- 2B. Amruta Vijay Deshmukh
Age:25 years, Occ. Household,
- 2C. Sau. Aruna Vijay Deshmukh,
Age:57 years, Occ. Household,
- 2D. Nilesh Vijay Deshmukh (dead)
Through L.Rs.
- 2D1. Anuja Nilesh Deshmukh,
Age : 33 years, Occ. Household,
- 2D2. Rajeshwari Nilesh Deshmukh,
Age : 8 years, Occ. Education,
Through natural Guardian (mother)
2D1. Anuja Nilesh Deshmukh
Age : 33 years, Occ. Household,
All 2A to 2D2 r/o. Near Rajgad,
Old Bungalow, Ghat Road,

Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon.

3. Chitra Vithalrao Deshmukh,
Age : 56 years, Occ. Household,
r/o. Bhagwati Bungalow,
Bhagya Nagar, Nanded
4. Anita Jivan @ Milind Deshmukh,
Age : 44 years, Occ. Advocate,
r/o. Plot No.51, A.V.Mohite Township,
Anand Nagar, Sinhagad Road,
Pune – 51

..Respondents

Mr.Subodh P. Shah, Advocate for appellant
Mr.N.N.Desale, Advocate for respondent nos.2A to 2C

CORAM : R.G. AVACHAT, J.
DATE : JUNE 08, 2022

ORDER :-

The challenge in this appeal is to the order dated 19.04.2018 passed by learned Civil Judge, Senior Division, Jalgaon, on application (Exh.6) in Special Civil Suit No.95 of 2015, whereby the appellant (original defendant no.4) has been restrained from alienating or creating third party interest in respect of the suit land, being gut no.24/2.

2. Learned counsel for the appellant first took this Court through certain paragraphs in the plaint. He would then submit that respondent no.1 – original plaintiff, in fact, did neither make out a

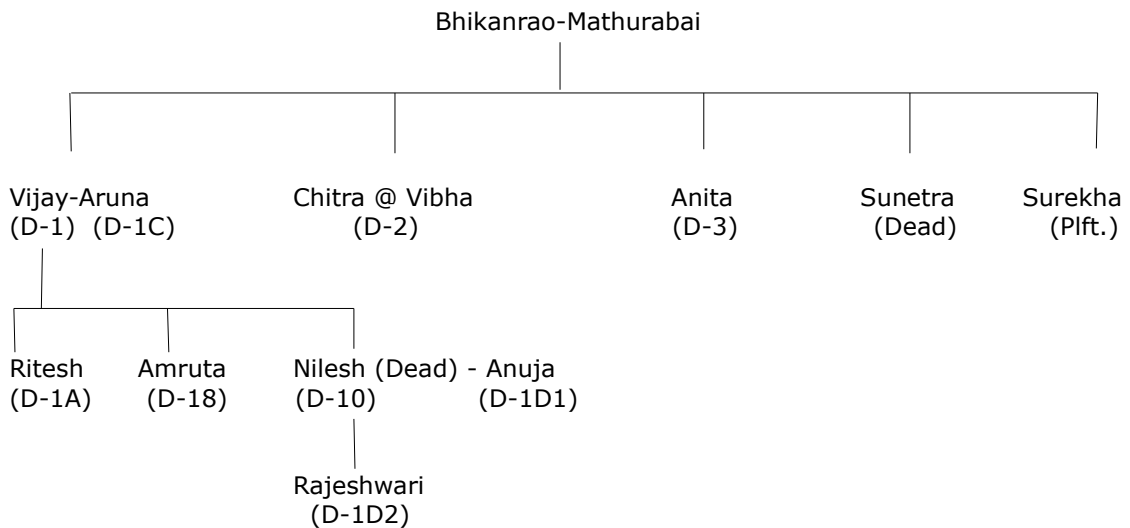
prima facie case nor balance of convenience was shown to have been in her favour. No reasons have been assigned by the trial Court in support of the impugned order. According to learned counsel, the application for temporary injunction was moved along with the suit itself. The plaintiff, however, did not press the application and then, after a long spell of time, urged for hearing of the application for temporary injunction. According to learned counsel, the appellant has purchased the land gut no.24/2 after having given a public notice inviting objections, if any, to his proposed transaction. None had offered any objection. The appellant has paid a valuable consideration of Rs.45 Lakhs. The vendor of the appellant had share of more than the land purchased by the appellant herein. As such, neither the plaintiff nor other defendants would be affected in getting their share in all other joint family properties. Learned counsel would further submit that the appellant did not intend to lay plots in the land purchased by him. It could, at the most, be sold to one or two persons. No complication would thereby be created in progress of the suit. Learned counsel, ultimately, urged for allowing the appeal. He relied on the decisions of this Court in the cases of (i) **Chandrakant Shankar Sapkal and anr. Vs. Anil Balbhim Khatavkar, 2002(4)**

Mh.L.J. 889 and (ii) Bharat Petroleum Corporation Ltd. Vs. Videocon Properties Ltd., 2014(6) Mh.L.J. 289.

3. Learned counsel for respondent nos.2A to 2C would, on the other hand, support the impugned judgment and order.

4. Considered the submissions advanced. Perused the averments in the plaint.

It is a suit for partition and separate possession of the joint family properties. One Bhikanrao was the common ancestor. He is survived by his widow and four children *i.e.* a son and three daughters. The suit has been filed by one of the daughters, Surekha. For better appreciation, the family tree is given below:-



Admittedly, the appellant (defendant no.4) is a stranger to the family. He has purchased the land gut no.24/2, admeasuring 4H for a consideration of Rs.45 Lakhs way back in 2009. A public notice was issued before finalisation of the transaction. None had offered objection. In view of this Court, the same may be helpful for the appellant while the suit would be decided on its own merits and the Court is called upon to adjust the equities.

5. As per the case of the respondent/plaintiff, partition of the family properties was effected way back in July, 1956, between her parents and brother – Vijay. A copy of the deed of partition is on record. When the partition was effected, Vijay was minor. All his sisters were born post partition of the family properties was effected. As per the terms of the deed of partition, brother – Vijay would have no right, title and interest in the properties that were given to the share of his parents. Such a clause was inserted in the deed of partition only with a view to secure the interest of the children that may be born to the couple subsequently. This Court do not propose to make any observation as regards said clause. It is for the trial Court to interpret the same. Suffice it to say that the land purchased by the appellant herein is not part and parcel of the

properties that has been allotted to the share of Vijay, through whom he (appellant) claims.

6. Order XXXIX Rule 1(a) of the Code of Civil Procedure states that where, in any suit, it is proved by an affidavit or otherwise, that any property in dispute in a suit is in danger of being alienated by any party to the suit, the Court may grant temporary injunction to restrain such act.

7. True, before grant of a relief under Order XXXIX Rule 1(a) of Cr.P.C., the applicant is required to make out a *prima facie* case besides showing that balance of convenience tilts in his/her favour. The Court is also required to be satisfied that irreparable loss would be caused if temporary injunction is not granted. There can be no dispute over what has been observed by this Court in the aforesaid two authorities relied on by learned counsel for the appellant. Each case has to be decided on its own facts and circumstances.

8. The appellant is a stranger to the family. He has, admittedly, purchased the property, wherein the plaintiff and her other two sisters have share besides so called share of his vendor. The submissions made by learned counsel for the appellant would

suggest that the appellant intends to sell the land purchased by him. Although he has purchased the suit land after giving public notice, that would not take away the right, title and interest of other co-owners. The submissions made by learned counsel that the land may be sold to not more than 2-3 persons, itself indicates that the subject-matter of the suit is in danger of being alienated by a party to the suit. The trial Court has, thus, rightly observed that it would create complication in the progress of the suit. No doubt the principle of *lis pendence* is there to take care of the interest of the plaintiff. Said principle is, however, not without exception. The appellant may very well resort to Section 52 of the Transfer of Property Act, 1882 and move an application to the trial Court seeking permission for sale of the land purchased by him. If such an application is moved, the same would be decided on its own merits.

9. Suffice it to say that the appellant is a stranger to the family and has purchased the land wherein, the plaintiff and other co-owners appear to have share. The trial Court is justified in clamping injunction restraining the appellant from creating any third party interest in the land purchased by him.

10. Since the trial Court has exercised its discretion rightly, this Court is reluctant to interfere therewith. The appeal, therefore, fails. The same is, thus, dismissed. The Civil Application stands disposed of.

[R.G. AVACHAT, J.]

KBP