

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.1233 OF 2022
IN
APPEAL NO.1006 OF 2005**

Kalhans H Javeri ...Applicant
Versus
Mukul H Ghia & Ors ...Respondents

**WITH
TPAC (L) NO.9875 OF 2022
IN
INTERIM APPLICATION NO.1233 OF 2022**

Bank of Baroda (Third party Applicant) ...Applicant
Versus
Kalhans H Javeri & Ors ...Respondents

Digitally
signed by
HEMANT
CHANDERSEN
SHIV
Date:
2022.04.01
18:06:17
+0530

HEMANT
CHANDERSEN
SHIV

**WITH
INTERIM APPLICATION NO.1054 OF 2022
IN
APPEAL NO.1006 OF 2005**

Kalhans H Javeri ...Applicant
Versus
Mukul H Ghia & Ors ...Respondents

**Mr Mangal Bhandari, i/b Pranjali Bhandari for the Applicant in both
Interim Applications.
Ms Pooja Batra, with Mr Sunil Tilokchandani and Ms Nipa Ghosh i/b
Manilal Kher Ambalal & Co Respondent Nos 1 and 2.**

Mr Anant B Shinde, for third party.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.
DATED: 31st March 2022**

PC:-

1. Both Applications by Kalhans Jhaveri are, in our view, misconceived and not maintainable. Kalhans Jhaveri is the Appellant in Appeal No 1006 of 2005. He was originally Defendant No 2 in a suit filed by his two sisters, Mukul and Nilima, for administration of the estates of the parents, Hasmukhlal and Jineshwaridevi. The other defendants to the suit were Kalhans's brothers, Kamalnayan and Hirendra. Thus the two sisters were the plaintiffs and three brothers were defendants. The administration suit pertains to the estates of both parents of these parties.

2. On 9th September 2005, a learned Single Judge made an order on the plaintiffs' Notice of Motion. By an order of 16th February 2006, Kalhans was restrained from transferring, alienating, disposing of or creating any third party right in any manner whatsoever in the property until disposal of the Appeal.

3. Mr Bhandari for Kalhans has two Interim Applications. The first seeks a restoration of the disposed Appeal No 1006 of 2005 in which the order of 16th February 2006 was passed. The second, Interim Application No 1054 of 2022, seeks a 'clarification' that the appellate order is limited to "the 25% share of the father and mother in the farm land property" and does not apply to "the independent

original 25% share holdings” of the Applicant/Appellant (viz., Kalhans).

4. Ms Batra, the learned Advocate for the original Plaintiffs, is correct in saying that this is a very thinly disguised review Petition and there is no cause for review. We agree. She is also correct in saying that no such clarification is either necessary or possible. Kalhans’s application loses sight of the fact that this is not a title suit. It is a suit for administration of the estate of the parents of the Plaintiffs and the Defendants. It is therefore only concerned with the estates of the parents. What Kalhans indirectly seeks is an acknowledgment by the Court — with no real adjudication — that Kalhans in fact has some independent shareholdings in the farm land property. This is not admitted by the Plaintiffs. Ms Batra specifically disputes this on behalf of the Plaintiffs, the two sisters. In response, Mr Bhandari seeks to invoke some documents of title. We cannot examine those. Kalhans’s claim to independent title has not been established by an adjudication by a court of competent jurisdiction.

5. It is impossible to give the Appellant any such clarification. That would tantamount to an adjudication of title for which there is no proceeding at all.

6. The two Interim Applications are misconceived and are dismissed.

7. The only clarification that we are inclined to make which is for all concerned is that the deposit of Rs 25 lakhs ordered by the Appeal Court is necessarily to the credit of pending administration suit itself. None can have any objection to this.

(Madhav J. Jamdar, J)

(G. S. Patel, J)