

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

**INTERIM APPLICATION NO. 3590 OF 2020
IN
FIRST APPEAL NO. 1407 OF 2012**

- 1 Arun Sampatrao Patil
Age 55 years, Occupation : Business
- 2 Dilip Laxman Kuradkar,
Age 52 years, Occupation : Business,
both carrying on their business at
1206/42A, Lokmat Bhavan,
Jangli Maharaj Road,
Pune – 411004.

Applicants/
..Interveners

In the matter between

- 1 Shri Amruta Laxman Waghmare
(Deceased) His legal heirs:-
- 1a) Shri Vilas Amruta Waghmare,
Age 64 years, Occ. Service,
R/a. Wakad, Taluka Mulshi. Dist. Pune
- 1b) Shri Kailas Amruta Waghmare,
Age 51 years, Occ. Service,
Ra. Wakad, Tal. Mulshi, Dist. Pune
- 1c) Shri Vijay Amruta Waghmare,
Age 46 years, Occ. Service
R/a. Wakad, Tal. Mulshi, Dist. Pune
- 1d) Shri Ravindra Amruta Waghmare
Age 46 years, Occ. Service,
R/a. Wakad, Tal. Mulshi, Dist. Pune
- 1e) Sou. Yamuna Bhagwan Jagtap,
Age 58 years, Occ. Housewife,
Ra. Wakad, Tal. Mulshi, Dist. Pune
- 2 Shri Rau Laxman Waghmare
(Deceased) his legal heirs
(Transposed as defendant No.5
- 3 Shri Devram Laxman Waghmare
(Deceased) His legal heirs:-
- 3a) Shri Ramdas Deoram Waghmare
(Deceased) His legal heirs:-

- 3a(1) Shri Vishwas Ramdas Waghmare
Age 29 years, Occ. Service,
- 3a(2) Shri Vishal Ramdas Waghmare
Age 25 years, Of. Education.
- 3a(3) Smt. Asha Ramdas Waghmare,
Age 48 years, Occ. Household,
- 3a(4) Sou. Rekha Prakash Kamble,
Age 30 years, Occ. Housewife
R/a. Jejuri, Tal. Purandar, Dist. Pune
3a (1) to 3a(3) r/a. Vishrantwadi,
S No. 34/2, Plot No. 137
Tingre Nagar, Pune-414
- 3b) Shri Pradeep Deoram Waghmare
Age 48 years, Occ. Service
- 3c) Shri Rajendra Deoram Waghmare
(Deceased), his legal heirs:-
- 3c(a) Smt. Sangita Rajendra Waghmare
Age 41 years, Occ. Household
- 3c(b) Shri Vinit Rajendra Waghmare
Age 22 years, Occ. Education
- 3c(c) Kum Shraddha Rajendra Waghmare
Age 18 years, Occ. Education
- 3c(d) Kum Sakshi Rajendra Waghmare
Age 13 years, Occ. Education
(On behalf of Minor Mother
Smt. Sangita Rajendra Waghmare
All 3c(a) to 3c(d) Ra. 80,
Ambedkar Housing Society,
Yerawada, Pune-411006.
- 3d) Sau. Alka Ananda Bengali
Age 53 years, Occ. Household
Ra Ghorpadi Gaon, Pune.
- 3e) Sou. Asha Dadu Wanjare
Age 50 years. Occ. Household,
R/a. Yashwantnagar, Yerawada,
Pune 411006.
- 3f) Sou. Shila Baburao Ovhal
Age 41 years, Occ. Household
R/a. Sevak Chawl, Pune University,

- Pune 411007
- 3g) Sou. Sujata Ghanashyam Jagtap
Age 38 years, Occ. Household
Ra. Building No. 19/1, Old A-Type,
Range Hills, Khadki, Pune 411020

..Appellants

Versus

- 1 Bhikaji Laxman Waghmare
(Deceased), his legal heirs:
- 1a) Shri Narayan Bhikaji Waghmare
(Deceased) his legal heirs:
- 1a(1) Smt. Laxmibai Narayan Waghmare
Age 58 years, Occ. Household
- 1a(2) Shri Nitin Narayan Waghmare
Age 38 years, Occ. Service . Both
R/a. Wakad, Tal. Mulshi, Dist. Pune
- 1b) Shri Bhagwan Bhikaji Waghmare
(Deceased) His legal heirs:
- 1b(a) Smt. Sandhya Bhagwan Waghmare
Age 37 years, Occ. Household
- 1b(b) Kum. Shweta Bhagwan Waghmare,
Age 28 years, Occ. Service
- 1b(c) Shri Satish Bhagwan Waghmare
Age 28 years, Occ. Service
- 1b(d) Kum. Gauri Bhagwan Waghmare
Age 19 years, Occ. Education
- 1b(e) Kum. Lila Bhagwan Waghmare
Age 17 years, Occ. Education
- 1b(f) Kum. Chingi Bhagwan Waghmare,
Age 17 years, Occ. Education
(On behalf of minor 1b(e) to 1b(f)
Respondent No.1b(c).
All Ra. Wakad, Taluka Mulshi, Dist. Pune
- 1c) Suresh Bhikaji Waghmare
(Deceased) His legal heirs:
- 1c(1) Smt. Madhuri Suresh Waghmare
Age 63 years, Occ. Household
- 1c(2) Shri Swapnil Suresh Waghmare
Age 27 years, Occ. Education,
Both R/a. Flat No.10, Building No.1/C/3,

- Siddharth Nagar, Aundh Gaon, Pune
- 1d) Shri Prakash Bhikaji Waghmare,
(Deceased) - Deleted
- 1e) Sou. Revubai Ganpat Sonawane,
Age 53 years, Occ. Household,
R/a. Rihe, Tal. Mulshi, Dist. Pune
- 1f) Sou. Shavubai Dhondiba Bhalerao
Age 45 years, Occ. Household,
R/a. Ambedkar Zopadpatti, Aundh Road
Pune 411003.
- 1g) Sou. Ranjana Kacharu Jagatap
(Deceased) her legal heirs:
- 1g(1) Sou. Sujata Suresh Ovhal
Age Adult, Occ. Household
- 1g(2) Smt. Surekha Kacharu Jagatap
Age Adult, Occ. Household
Both R/a. Gulmohor Chawl, Near PMC School
Chinchwad, Pune 411003
- 1h) Sau. Latabai Ram Bhalerao
(Deceased) her legal heirs:
- 1h(a) Shri Ram Ganpat Bhalerao
Age 43 years, Occ. Service,
R/a. Tadiwala Road, Ambedkar Wasahat,
Near Sunil Carom House, Pune 411001
- 2 Shri Tukaram Laxman Waghmare
(Deceased) His legal heirs:-
- 2a) Shri Gulab Tukaram Waghmare
(Deceased) His legal heirs
- 2a(a) Smt. Bina Gulab Waghmare
(Deceased)
- 2a(b) Sau. Lata Sanjay Shinde,
Age 33 years, Occ. Household,
R/a. Post Wakad, Opposite Datta Mandir,
Tal. Mulshi, Dist. Pune
- 2b) Shri Subhash Tukaram Waghmare
Age 48 years, Occ. Services
10 years, Occ. Service
- 2c) Sau. Housabai Maruti Ovhal
(Deceased) her legal heirs.

- 2c(1) Shri Raju Maruti Ovhal
Age 53 years, Occ. Labour,
C/o. Subhash Tukaram Waghmare,
Wakad, Pune-57
- 2c(2) Shri Tanaji Maruti Ovhal
Age 47 years, Occ. Service,
C/o. Subhash Tukaram Waghmare,
Wakad, Pune-57
- 2c(3) Shri Anil Maruti Ovhal
Age 45 years, Occ. Labour,
C/o. Subhash Tukaram Waghmare
Wakad, Pune-57
- 2c(4) Shri Manoj Maruti Ovhal
Age Adult, Occ. Labour,
C/o. Subhash Tukaram Waghmare
Wakad, Pune-57
- 2d) Sau. Shakubai Limbaji Rokade,
Age 43 years, Occ. Household,
Ra. Wakad, Tal. Mulshi, Dist. Pune
- 2e) Sou. Manda Chandrakant Gaikwad
Age 38 years, Occ. Household
R/a. Chincholi, Tal. Haveli, Dist. Pune
- 2f) Sou. Sanjana Tukaram Waghmare
Age 33 years, Occ. Household
Ra. Wakad, Tal. Mulshi, Dist. Pune
- 3) Shri Bhau Laxman Waghmare
(Deceased) His legal heirs:-
- 3a) Shri Sadashiv Bhau Waghmare
(Deceased) His legal heirs:-
- 3a(1) Smt. Sharda Sadashiv Waghmare
Age : Adult, Occ. Household
- 3a(2) Santosh Sadashiv Waghmare
Age : Adult
- 3a(3) Sarika Santosh Ovhal
Age : Adult
- 3a(4) Mohini Sadashiv Waghmare,
Age : Adult
- 3a(5) Kiran Sadashiv Waghmare,
Age : Adult,

- All R/a. Wakad, Tal. Mulshi, Dist. Pune
- 3b) Smt. Parubai Bhau Waghmare,
Deleted.
- 3c) Sou. Saraswati Rambhau Dolas
Age 45 years, Occ. Household
R/a. Chikhalwadi, Tal. Khadaki, Pune-3
- 3d) Sou. Shakuntala Jyotiram Kalbhage
Age 43 years, Occ. Household
R/a. Bhimnagar, Bauddhavasti,
Bhosari, Pune
- 4 Shri Baban Laxman Waghmare
(Deceased) His legal heirs:-
- 4a) Shri Gautam Baban Waghmare
(Deceased) his legal heirs:-
- 4a(1) Smt. Saraswati Gautam Waghmare
Age 48 years, Occ. Household
- 4a(2) Shri Harshal Gautam Waghmare
Age 29 years, Occ. Service
- 4a(3) Shri Mayur Gautam Waghmare
Age 27 years, Occ. Service
All residents of New Datta Nagar,
Opposite Datta Mandir, Wakad,
Tal. Mulshi, Dist. Pune
- 4a(4) Sou. Shital Bharat Garud
Age 31 years, Occ. Household
R/a. 16/6. Rangehills, H-Type, Pune-20
- 4b) Shri Rahul Baban Waghmare
(Deceased) His legal heirs:
- 4b(1) Smt. Rohini Rahul Waghmare
Age 38 years, Occ. Household
- 4b(2) Shri Sanket Rahul Waghmare,
Age 19 years, Occ. Education
- 4b(3) Shri Srikanth Rahul Waghmare
Age 17 years, Occ. Education
For Minor Appellant Nos. 4b(1)
Smt. Rohini Rahul Waghmare
All residing at Wakad, Tal. Mulshi, Dist. Pune
- 4c) Shri Mahendra Baban Waghmare
(Deceased) his legal heirs:

- 4c(a) Smt. Usha Mahendra Waghmare
Age 28 years, Occ. Household
- 4c(b) Kum. Chhakuli Mahendra Waghmare
Age 5 years (For minor appellant No.4c(a))
Smt. Usha Mahendra Waghmare
Ra. Wakad, Tal. Mulshi, Dist. Pune
- 4d) Shri Ravindra Baban Waghmare
Age 39 years, Occ. Service
- 4e) Smt. Muktabai Baban Waghmare
(Deleted)
All R/a. Wakad, Tal. Mulshi, Dist. Pune
- 4f) Sau. Mangal Uttam Kadam
Age 33 years, Occ. Household
Ra. Tulsiwadi, Manpada Road,
Mazgaon, Mumbai
- 5 Shri Rau Laxman Waghmare
(Deceased) his legal heirs:
 - 5(1) Smt. Janabai Rau Waghmare
Age 68 years, Occ. Household
 - 5(2) Shri Sunil Rau Waghmare
Age 48 years, Occ. Service
 - 5(3) Shri Vikram Rau Waghmare
Age 47 yeas, Occ. Business
Ra. Near Datta Mandir, Wakad, Tal. Mulshi
Dist. Pune
 - 5(4) Sou. Suman Dagadu Shinde
Age 54 years, Occ. Household
 - 5(5) Sou. Kamal Baban Gaikwad
Age 52 years, Occ. Household
 - 5(6) Sou. Malan Sudhakar Sarode
Age 50 years, Occ. Household,
Respondent 2(4) to 2(6) summons to be
issued on Sunil Rau Waghmare
Adarsh Nagar, 8 Mula Road,
Khadaki, Pune
 - 5(7) Sou. Shila Kashinath Desai
Age 43 years, Occ. Household
R/a. Bauddha Wada, Near Janata High School,
Khopoli, Tal. Khalapur, Dist. Raigad

- 6 Nilesh Kanade Group Proprietor
Shri Nilesh Satish Kanade,
Age 40 years, Occ. Business
R/a. 413/B-1, Phoenix House,
Shaniwar Peth, Pune 411030
- 7 M/s. Mihir Projects, A Partnership Firm
Address : 1 A, Amogh, 15h Gali,
Prabhat Road, Pune 411004
on its behalf its partners:
- 7a) Shri Amit Sugamchand Sancheti
Age Adult, Occ. Business,
Address 1, Amogh, 15h Gali,
Prabhat Road, Pune 411004
- 7b) Shri Pramod Shaligram Bakare,
Age Adult, Occ. Business,
Address 1, Amogh, 15h Gali,
Prabhat Road, Pune 411004 ..Respondents

**WITH
CIVIL APPLICATION NO. 139 OF 2022
IN
FIRST APPEAL NO. 1407 OF 2012**

M/S. Ami Estates LLP
A registered Partnership Firm,
having its Registered office at
106, Dhruta Complex, 150, Narayan
Peth, N.C. Kelkar Road, Pune 411030 ..Applicant

AND

In the matter between

- 1 Shri Amruta Laxman Waghmare
(Deceased) His legal heirs :-
- 1a) Shri Vilas Amruta Waghmare
Age 64 years, Occ. Service,
R/a. Wakad, Tal. Mulshi, Dist. Pune
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Age 51 years, Occ. Services
R/a. Wakad, Tal. Mulshi, Dist. Pune
- 1c) Shri Vijay Amruta Waghmare

- Age 46 years, Occ. Services
R/a. Wakad, Tal. Mulshi, Dist. Pune
- 1d) Shri Ravindra Amruta Waghmare
Age 46 years, Occ. Services
R/a. Wakad, Tal. Mulshi, Dist. Pune
- 1e) Sou. Yamuna Bhagwan Jagtap
Age 58 years, Occ. Housewife
R/a. Wakad, Tal. Mulshi, Dist. Pune
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(Deceased) his legal heirs
(Transposed as Defendant No.5)
- 3 Shri Devram Laxman Waghmare
(Deceased) His legal heirs:-
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Age 48 years, Occ. Household,
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Age 30 years, Occ. Housewife
R/a. Jejuri, Tal. Purandar, Dist. Pune
3a (1) to 3a(3) r/a. Vishrantwadi,
S No. 34/2, Plot No. 137
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- 3b) Shri Pradeep Deoram Waghmare
Age 48 years, Occ. Service
- 3c) Shri Rajendra Deoram Waghmare
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Age 22 years, Occ. Education
- 3c(c) Kum Shraddha Rajendra Waghmare
Age 18 years, Occ. Education
- 3c(d) Kum Sakshi Rajendra Waghmare
Age 13 years, Occ. Education

- (On behalf of Minor Mother
Smt. Sangita Rajendra Waghmare
All 3c(a) to 3c(d) Ra. 80, Ambedkar Housing
Society, Yerawada, Pune-411006.
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Age 53 years, Occ. Household
R/a. Ghorpadi Gaon, Pune.
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Age 50 years. Occ. Household,
R/a. Yashwantnagar, Yerawada,
Pune 411006.
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Age 41 years, Occ. Household
R/a. Sevak Chawl, Pune University,
Pune 411007
- 3g) Sou. Sujata Ghanashyam Jagtap
Age 38 years, Occ. Household
R/a. Building No. 19/1, Old A-Type,
Range Hills, Khadki, Pune 411020
- ..Appellants

Versus

- 1 Shri Bhikaji Laxman Waghmare
(Deceased) his legal heirs:-
- 1a) Shri Narayan Bhikaji Waghmare
(Deceased) his legal heirs:
- 1a(1) Smt. Laxmibai Narayan Waghmare
Age 58 years, Occ. Household
- 1a(2) Shri Nitin Narayan Waghmare
Age 38 years, Occ. Service . Both
R/a. Wakad, Tal. Mulshi, Dist. Pune
- 1b) Shri Bhagwan Bhikaji Waghmare
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- 1b(b) Kum. Shweta Bhagwan Waghmare,
Age 28 years, Occ. Service
- 1b(c) Shri Satish Bhagwan Waghmare
Age 28 years, Occ. Service
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Age 19 years, Occ. Education

- 1b(e) Kum. Lila Bhagwan Waghmare
Age 17 years, Occ. Education
- 1b(f) Kum. Chingi Bhagwan Waghmare,
Age 17 years, Occ. Education
(On behalf of minor 1b(e) to 1b(f)
Respondent No.1b(c).
All Ra. Wakad, Taluka Mulshi, Dist. Pune
- 1c) Suresh Bhikaji Waghmare
(Deceased) His legal heirs:
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Age 63 years, Occ. Household
 - 1c(2) Shri Swapnil Suresh Waghmare
Age 27 years, Occ. Education,
Both R/a. Flat No.10, Building No.1/C/3,
Siddharth Nagar, Aundh Gaon, Pune
- 1d) Shri Prakash Bhikaji Waghmare,
(Deceased) - Deleted
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Age 53 years, Occ. Household,
R/a. Rihe, Tal. Mulshi, Dist. Pune
- 1f) Sou. Shavubai Dhondiba Bhalerao
Age 45 years, Occ. Household,
R/a. Ambedkar Zopadpatti, Aundh Road
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- 1g) Sou. Ranjana Kacharu Jagatap
(Deceased) her legal heirs:
 - 1g(1) Sou. Sujata Suresh Ovhal
Age Adult, Occ. Household
 - 1g(2) Smt. Surekha Kacharu Jagatap
Age Adult, Occ. Household
Both R/a. Gulmohor Chawl, Near PMC School
Chinchwad, Pune 411003
- 1h) Sau. Latabai Ram Bhalerao
(Deceased) her legal heirs:
 - 1h(a) Shri Ram Ganpat Bhalerao
Age 43 years, Occ. Service,
R/a. Tadiwala Road, Ambedkar Wasahat,
Near Sunil Carom House, Pune 411001
- 2 Shri Tukaram Laxman Waghmare

- (Deceased) His legal heirs:-
- 2a) Shri Gulab Tukaram Waghmare
(Deceased) His legal heirs
- 2a(a) Smt. Bina Gulab Waghmare
(Deceased)
- 2a(b) Sau. Lata Sanjay Shinde,
Age 33 years, Occ. Household,
R/a. Post Wakad, Opposite Datta Mandir,
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Wakad, Pune-57
- 2c(2) Shri Tanaji Maruti Ovhal
Age 47 years, Occ. Service,
C/o. Subhash Tukaram Waghmare,
Wakad, Pune-57
- 2c(3) Shri Anil Maruti Ovhal
Age 45 years, Occ. Labour,
C/o. Subhash Tukaram Waghmare
Wakad, Pune-57
- 2c(4) Shri Manoj Maruti Ovhal
Age Adult, Occ. Labour,
C/o. Subhash Tukaram Waghmare
Wakad, Pune-57
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Age 43 years, Occ. Household,
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- 2e) Sou. Manda Chandrakant Gaikwad
Age 38 years, Occ. Household
R/a. Chincholi, Tal. Haveli, Dist. Pune
- 2f) Sou. Sanjana Tukaram Waghmare
Age 33 years, Occ. Household
R/a. Wakad, Tal. Mulshi, Dist. Pune
- 3) Shri Bhau Laxman Waghmare

- (Deceased) His legal heirs:-
- 3a) Shri Sadashiv Bhau Waghmare
(Deceased) His legal heirs:-
- 3a(1) Smt. Sharda Sadashiv Waghmare
Age : Adult, Occ. Household
- 3a(2) Santosh Sadashiv Waghmare
Age : Adult
- 3a(3) Sarika Santosh Ovhal
Age : Adult
- 3a(4) Mohini Sadashiv Waghmare,
Age : Adult
- 3a(5) Kiran Sadashiv Waghmare,
Age : Adult,
All R/a. Wakad, Tal. Mulshi, Dist. Pune
- 3b) Smt. Parubai Bhau Waghmare,
Deleted.
- 3c) Sou. Saraswati Rambhau Dolas
Age 45 years, Occ. Household
R/a. Chikhalwadi, Tal. Khadaki, Pune-3
- 3d) Sou. Shakuntala Jyotiram Kalbhage
Age 43 years, Occ. Household
R/a. Bhimnagar, Baudhdhavasti,
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- 4 Shri Baban Laxman Waghmare
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- 4a) Shri Gautam Baban Waghmare
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Age 29 years, Occ. Service
- 4a(3) Shri Mayur Gautam Waghmare
Age 27 years, Occ. Service
All residence of New Datta Nagar,
Opposite Datta Mandir, Wakad,
Tal. Mulshi, Dist. Pune
- 4a(4) Sou. Shital Bharat Garud
Age 31 years, Occ. Household
R/a. 16/6. Rangehills, H-Type, Pune-20

- 4b) Shri Rahul Baban Waghmare
(Deceased) His legal heirs:
 - 4b(1) Smt. Rohini Rahul Waghmare
Age 38 years, Occ. Household
 - 4b(2) Shri Sanket Rahul Waghmare,
Age 19 years, Occ. Education
 - 4b(3) Shri Srikant Rahul Waghmare
Age 17 years, Occ. Education
For Minor Appellant Nos. 4b(1)
Smt. Rohini Rahul Waghmare
All residing at Wakad, Tal. Mulshi, Dist. Pune
- 4c) Shri Mahendra Baban Waghmare
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 - 4c(a) Smt. Usha Mahendra Waghmare
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 - 4c(b) Kum. Chhakuli Mahendra Waghmare
Age 5 years (For minor appellant No.4c(a))
Smt. Usha Mahendra Waghmare
Ra. Wakad, Tal. Mulshi, Dist. Pune
- 4d) Shri Ravindra Baban Waghmare
Age 39 years, Occ. Service
- 4e) Smt. Muktabai Baban Waghmare
(Deleted)
All R/a. Wakad, Tal. Mulshi, Dist. Pune
- 4f) Sau. Mangal Uttam Kadam
Age 33 years, Occ. Household
Ra. Tulsiwadi, Manpada Road,
Mazgaon, Mumbai
- 5 Shri Rau Laxman Waghmare
(Deceased) his legal heirs:
 - 5(1) Smt. Janabai Rau Waghmare
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Age 48 years, Occ. Service
 - 5(3) Shri Vikram Rau Waghmare
Age 47 yeas, Occ. Business
Ra. Near Datta Mandir, Wakad, Tal. Mulshi
Dist. Pune
 - 5(4) Sou. Suman Dagadu Shinde

- Age 54 years, Occ. Household
 5(5) Sou. Kamal Baban Gaikwad
 Age 52 years, Occ. Household
 5(6) Sou. Malan Sudhakar Sarode
 Age 50 years, Occ. Household,
 Respondent 2(4) to 2(6) summons to be
 issued on Sunil Rau Waghmare
 Adarsh Nagar, 8 Mula Road,
 Khadaki, Pune
 5(7) Sou. Shila Kashinath Desai
 Age 43 years, Occ. Household
 R/a. Bauddha Wada, Near Janata High School,
 Khopoli, Tal. Khalapur, Dist. Raigad
 6 Nilesh Kanade Group Proprietor
 Shri Nilesh Satish Kanade,
 Age 40 years, Occ. Business
 R/a. 413/B-1, Phoenix House,
 Shaniwar Peth, Pune 411030
 7 M/s. Mihir Projects, A Partnership Firm
 Address : 1 A, Amogh, 15h Gali,
 Prabhat Road, Pune 411004
 on its behalf its partners:
 7a) Shri Amit Sugamchand Sancheti
 Age Adult, Occ. Business,
 Address 1, Amogh, 15h Gali,
 Prabhat Road, Pune 411004
 7b) Shri Pramod Shaligram Bakare,
 Age Adult, Occ. Business,
 Address 1, Amogh, 15h Gali,
 Prabhat Road, Pune 411004 .. Respondents

**WITH
 CIVIL APPLICATION NO. 140 OF 2022
 IN
 FIRST APPEAL NO. 1519 OF 2012**

- M/S. Ami Estates LLP .. Applicant
IN THE MATTER BETWEEN :
 1) Shri. Bhau Laxman Waghmare
 (Deceased) His legal heirs:-

- 1a) Shri.Sadashiv Bhau Waghmare
(Deceased) His Legal Heirs:-
 - 1a(1) Smt.Sharda Sadashiv Waghmare
Age (Adult), Occ – Houshold
 - 1a(2) Santosh Sadashiv Waghmare
Age (Adult)
 - 1a(3) Sarika Santosh Ovhal
Age (Adult)
 - 1a(4) Mohini Sadashiv Waghmare,
Age (Adult)
 - 1a(5) Kiran Sadashi Waghmare
Age (Adult)
All R/at. Wakad, Taluka Mulshi,
- 1b) Smt.Parubai Bhau Waghmare, Deleted
- 1c) Sou.Saraswati Rambhau Dolas,
Age 45 years, Occ. Household,
R/at.Chkhalwadi, Tal.Khadaki, Pune – 3
- 1d) Sou Shakuntala Jyotiram Kalbhage
Age 43 years, Occ. Household,
R/at Bhimnagar, Baudha Vasti
Bhosari, Pune.
- 2b) Shri Subhash Tukaram Waghmare
Age 48 years, Occ. Service
- 2c) Sau. Shakubai Limbaji Rokade
Age 43 years, Occ. Household
R/a.Wakad, Taluka Mulshi,
District Pune
- 2d) Sou.Manda Chandrakant Gaikwad
Age 38 years, Occ. Household
R/at.Chincholi, Taluka Haveli
Dist. Pune
- 2e) Sou.Sanjana Tukaram Waghmare
Age 33 years, Occ. Household
R/a.Wakad, Tal.Mulshi, District Pune
- 3) Shri Baban Laxman Waghmare
(Deceased) his Legal Heirs :-
 - 3a) Shri.Gautam Baban Waghmare
(Deceased) his legal heirs:-
 - 3a(1) Smt.Saraswati Gautam Waghmare

- Age 48 years, Occ. Household
- 3a(2) Shri Harshal Gautam Waghmare
Age 29 years, Occ : Service
- 3a(3) Shri.Mayur Gautam Waghmare
Age 27 years, Occ : Service.
All residence of New Datta Nagar,
Opposite Datta Mandir, Wakad,
Taluka Mulshi, District Pune
- 3a(4) Sou.Shital Bharat Garud,
Age 31 years, Occ. Household,
R/a.16/6, Rangehills, H – Type, Pune – 20
- 3b) Shri.Rahul Baban Waghmare
(Deceased) His Legal Heirs:-
- 3b(2) Shri Sanket Rahul Waghmare,
Age 19 years, Occ. : Education
- 3b(3) Shri.Srikant Rahul Waghmare
Age 17 years, Occ. Education
For Minor Appellant Nos.6b(1)
Smt.Rohini Rahul Waghmare
All residing at Wakad, Taluka Mulshi
District Pune.
- 3c) Shri.Mahendra Baban Waghmare
(Deceased) his Legal Heirs:-
- 3c(a) 3c(a) Smt.Usha Mahenddra Waghmare
Age 28 years, Occ. Household,
- 3c(b) Kum.Chhakuli Mahendra Waghmare
Age 5 years,
(For minor appellant No.6c(a)
Smt.Usha Mahendra Waghmare
R/a.Wakad, Taluka-Mulshi, District Pune.
- 3d) Shri Ravindra Baban Waghmare,
Age 39 years, Occ. Service.
- 3e) Smt. Muktabai Baban Waghmare
(Deleted)
All r/at.Wakad, Taluka Mulshi,
District Pune.
- 3f) Sau.Mangal Uttam Kadam,
Age 33 years, Occ. Houshold,
R/at.Tulshiwadi, Manpaudarf Road,

..Appellants

Mazgaon, Mumbai

Versus

- 1 Shri Amruta Laxman Waghmare
(Deceased) His legal heirs :-
 - 1a) Shri Vilas Amruta Waghmare
Age 64 years, Occ. Service,
R/a. Wakad, Tal. Mulshi, Dist. Pune
 - 1b) Shri Kailas Amruta Waghmare
Age 51 years, Occ. Services
R/a. Wakad, Tal. Mulshi, Dist. Pune
 - 1c) Shri Vijay Amruta Waghmare
Age 46 years, Occ. Services
R/a. Wakad, Tal. Mulshi, Dist. Pune
 - 1d) Shri Ravindra Amruta Waghmare
Age 46 years, Occ. Services
R/a. Wakad, Tal. Mulshi, Dist. Pune
 - 1e) Sou. Yamuna Bhagwan Jagtap
Age 58 years, Occ. Housewife
R/a. Wakad, Tal. Mulshi, Dist. Pune
- 2 Shri Devram Laxman Waghmare
(Deceased) His legal heirs:-
 - 2a) Shri Ramdas Deoram Waghmare
(Deceased) His legal heirs:-
 - 2a(1) Shri Vishwas Ramdas Waghmare
Age 29 years, Occ. Service,
 - 2a(2) Shri Vishal Ramdas Waghmare
Age 25 years, Occ. Education.
 - 2a(3) Smt. Asha Ramdas Waghmare,
Age 48 years, Occ. Household,
 - 2a(4) Sou. Rekha Prakash Kamble,
Age 30 years, Occ. Housewife
R/a. Jejuri, Tal. Purandar, Dist. Pune
2a (1) to 2a(3) r/a. Vishrantwadi,
S No. 34/2, Plot No. 137
Tingre Nagar, Pune-414
 - 2b) Shri Pradeep Deoram Waghmare
Age 48 years, Occ. Service
 - 2c) Shri Rajendra Deoram Waghmare

- (Deceased), his legal heirs:-
- 2c(a) Smt. Sangita Rajendra Waghmare
Age 41 years, Occ. Household
- 2c(b) Shri Vinit Rajendra Waghmare
Age 22 years, Occ. Education
- 2c(c) Kum Shraddha Rajendra Waghmare
Age 18 years, Occ. Education
- 2c(d) Kum Sakshi Rajendra Waghmare
Age 13 years, Occ. Education
(On behalf of Minor Mother
Smt. Sangita Rajendra Waghmare
All 3c(a) to 3c(d) Ra. 80, Ambedkar Housing
Society, Yerawada, Pune-411006.
- 2d) Sau. Alka Ananda Bengali
Age 53 years, Occ. Household
R/a. Ghorpadi Gaon, Pune.
- 2e) Sou. Asha Dadu Wanjare
Age 50 years. Occ. Household,
R/a. Yashwantnagar, Yerawada,
Pune 411006.
- 2f) Sou. Shila Baburao Ovhal
Age 41 years, Occ. Household
R/a. Sevak Chawl, Pune University,
Pune 411007
- 2g) Sou. Sujata Ghanashyam Jagtap
Age 38 years, Occ. Household
R/a. Building No. 19/1, Old A-Type,
Range Hills, Khadki, Pune 411020
- 3 Bhikaji Laxman Waghmare
(Deceased), his legal heirs:
- 3a) Shri Narayan Bhikaji Waghmare
(Deceased) his legal heirs:
- 3a(1) Smt. Laxmibai Narayan Waghmare
Age 58 years, Occ. Household
- 3a(2) Shri Nitin Narayan Waghmare
Age 38 years, Occ. Service . Both
R/a. Wakad, Tal. Mulshi, Dist. Pune
- 3b) Shri Bhagwan Bhikaji Waghmare
(Deceased) His legal heirs:
- ..Appellants

- 3b(a) Smt. Sandhya Bhagwan Waghmare
Age 37 years, Occ. Household
- 3b(b) Kum. Shweta Bhagwan Waghmare,
Age 28 years, Occ. Service
- 3b(c) Shri Satish Bhagwan Waghmare
Age 28 years, Occ. Service
- 3b(d) Kum. Gauri Bhagwan Waghmare
Age 19 years, Occ. Education
- 3b(e) Kum. Lila Bhagwan Waghmare
Age 17 years, Occ. Education
- 3b(f) Kum. Chingi Bhagwan Waghmare,
Age 17 years, Occ. Education
(On behalf of minor 1b(e) to 1b(f)
Respondent No.1b(c).
All Ra. Wakad, Taluka Mulshi, Dist. Pune
- 3c) Suresh Bhikaji Waghmare
(Deceased) His legal heirs:
 - 3c(1) Smt. Madhuri Suresh Waghmare
Age 63 years, Occ. Household
 - 3c(2) Shri Swapnil Suresh Waghmare
Age 27 years, Occ. Education,
Both R/a. Flat No.10, Building No.1/C/3,
Siddharth Nagar, Aundh Gaon, Pune
- 4 Shri Rau Laxman Waghmare
(Deceased) his legal heirs:
 - 4(1) Smt. Janabai Rau Waghmare
Age 68 years, Occ. Household
 - 4(2) Shri Sunil Rau Waghmare
Age 48 years, Occ. Service
 - 4(3) Shri Vikram Rau Waghmare
Age 47 yeas, Occ. Business
Ra. Near Datta Mandir, Wakad, Tal. Mulshi
Dist. Pune
 - 4(4) Sou. Suman Dagadu Shinde
Age 54 years, Occ. Household
 - 4(5) Sou. Kamal Baban Gaikwad
Age 52 years, Occ. Household
 - 4(6) Sou. Malan Sudhakar Sarode
Age 50 years, Occ. Household,

- Respondent 2(4) to 2(6) summons to be issued on Sunil Rau Waghmare
Adarsh Nagar, 8 Mula Road,
Khadaki, Pune
- 4(7) Sou. Shila Kashinath Desai
Age 43 years, Occ. Household
R/a. Bauddha Wada, Near Janata High School,
Khopoli, Tal. Khalapur, Dist. Raigad
- 5c) Sau. Housabai Maruti Ovhal
(Deceased) her legal heirs.
- 5c(1) Shri Raju Maruti Ovhal
Age 53 years, Occ. Labour,
C/o. Subhash Tukaram Waghmare,
Wakad, Pune-57
- 5c(2) Shri Tanaji Maruti Ovhal
Age 47 years, Occ. Service,
C/o. Subhash Tukaram Waghmare,
Wakad, Pune-57
- 5c(3) Shri Anil Maruti Ovhal
Age 45 years, Occ. Labour,
C/o. Subhash Tukaram Waghmare
Wakad, Pune-57
- 5c(4) Shri Manoj Maruti Ovhal
Age Adult, Occ. Labour,
C/o. Subhash Tukaram Waghmare
Wakad, Pune-57
- 6 Nilesh Kanade Group Proprietor
Shri Nilesh Satish Kanade,
Age 40 years, Occ. Business
R/a. 413/B-1, Phoenix House,
Shaniwar Peth, Pune 411030
- 7 M/s. Mihir Projects, A Partnership Firm
Address : 1 A, Amogh, 15h Gali,
Prabhat Road, Pune 411004
on its behalf its partners:
- 7a) Shri Amit Sugamchand Sancheti
Age Adult, Occ. Business,
Address 1, Amogh, 15h Gali,
Prabhat Road, Pune 411004

7b) Shri Pramod Shaligram Bakare,
Age Adult, Occ. Business,
Address 1, Amogh, 15h Gali,
Prabhat Road, Pune 411004

..Respondents

....

Mr.Mohan B. Jadhav, Advocate for Applicant in IA 3590/2020 in FA 1407/2012.

Mr.Vishal Kanade a/w Mr.Sumit Raghani i/b Agrud Partners,
Advocates for Applicants in CA 139/2022 & 140/2022.

Mr.Karl Tamboly a/w Mr.Anuj Desai i/b Karan S. Thorat, Advocates for
Respondent Nos. 1A(1), 1A(2), 1B(A), 1B(B), 1B(C), 1B(D) & 1C(2).

Mr.Sanjiv Sawant a/w Mr. Malhar Bageshwar, Advocates for Appellants
in FA/1407/2022.

Mr.Sachin Kadam, Advocate for Appellants in FA/1519/2012.

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CORAM : K. R. SHRIRAM &
RAJESH S PATIL, JJ.

DATED : 7th FEBRUARY 2023

ORAL JUDGMENT (Per K. R. SHRIRAM, J.) :

CIVIL APPLICATION NO. 139 OF 2022

WITH

CIVIL APPLICATION NO. 140 OF 2022

There was a partition suit filed by Appellant before the
Joint Civil Judge Senior Division, Pune, being Special Civil Suit
No.1478 of 2009 (Original Regular Civil Suit No.565 of 1996).

Respondents to the Appeal were Defendants in the suit. The suit was for partition of various properties, as mentioned in the impugned Judgment dated 31st July 2012. One of the property was land survey No.143/2. According to Appellants, the land was part of joint ancestral land whereas, it was the case of Respondent No.1(a) to 1(h), who are the legal heirs of original Defendant No.1 that the said property was self acquired property of Defendant No.1. Respondent Nos.1(a) to 1(h) (hereinafter referred to as Respondent No.1 for convenience) had granted development rights to Respondent No.6.

2 Applicant herein has filed this Application to be made a party to this Appeal on grounds, inter alia, that Respondent No.6, i.e., Mr.Nilesh Kanade Group through its proprietor Nilesh Satish Kanade had assigned the said property in favour of Applicant. The assignment deed dated 13th March 2007 (the deed of assignment), copy whereof is annexed to the application is signed by Respondent No.1, Respondent No.6 and Applicant. The assignment deed has been signed by Respondent No.6, as constituted attorney of Respondent No.1. According to Applicant the assignment happened during the pendency of the suit and it was left to Respondent No.6 to defend the suit and

now Respondent No.6 has turned hostile against Applicant and is not pursuing the First Appeal diligently because this Appeal has been pending in this Court for quite some time. According to Applicant, therefore, Applicant should be added as Respondent to the First Appeal. Mr.Kanade relied on Order XXII Rule 10 and 11 of the Code of Civil Procedure (CPC) and also Section 146 of the CPC. For ease of reference, both are reproduced herein:

“Order XXII Rule 10

xxxxxxx

10. Procedure in case of assignment before final order in suit – (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

[10-A. Duty of pleader to communicate to Court death of a party – Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.]

Order XXII Rule 11

11. Application of Order to appeals – In the application of this Order to appeals, so far as may be, the word “plaintiff” shall be held to include an appellant, the word “defendant” a respondent, and the word “suit” an appeal.”

“Section 146.

Proceedings by or against representatives – Save as otherwise provided by this Code or by any law for the time being in force, where any

proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.”

3 Mr.Kanade submitted that since Respondent No.6 has assigned his rights to Applicant, by virtue of Order XXII Rule 10 read with Rule 11, the Appeal, by leave of the Court, may be continued by or against Applicant because it is upon Applicant that the interest of Respondent No.6 has devolved.

4 Mr.Kanade, in the alternative, submitted that even if Order XXII Rule 10 would not be applicable still by virtue of Section 146 of CPC, the Appeal may be proceeded against Applicant because Applicant is claiming under Respondent No.6.

5 Mr.Kanade submitted that as per the deed of assignment, Applicant has paid Rs.4 crores to Respondent No.6, and, therefore, should be made a party to the Appeal since Respondent No.6 is not effectively defending the Appeal. Mr.Kanade submitted, relying upon a judgment of the Apex Court in ***Smt.Saila Bala Dassi Vs.Nirmala Sundari Dassi***¹, that the Apex Court has held that Section 146 of CPC provides any proceedings which can be taken by a person may also be taken by

1 AIR 1958 SCC 394

any person claiming under him and that the expression “claiming under” is wide enough to include cases of assignment as in the present case. Mr.Kanade also relied upon another Judgment of the Apex Court in the case of ***Amit Kumar Shaw and Anr. Vs. Farida Khatoon and Anr.***² to submit that under Order XXII Rule 10 no detailed inquiry at the stage of granting leave, is contemplated. A Court has to only be *prima facie* satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. These submissions were made by Mr.Kanade in response to a primary objection that Mr.Tamboli raised that the assignment deed on which Applicant was relying upon was on the teeth of an injunction order that was in force, as regards the said property.

6 Opposing the Civil Application, Mr.Tamboli submitted that on 14th November 2006, the trial Court had passed an order restraining Respondent No.1, his agents, servants or any other persons

2 (2005) 11 SCC 403

acting on his behalf from alienating or creating any third party interest in the suit property, i.e., land bearing Survey No.143/2 Wakad, Pune, until further orders. Mr.Tamboli submitted, relying on a judgment of the Apex Court in *Surjit Singh and Ors. Vs. Harbans Singh and Ors.*³ and a Judgment of a Division Bench of this Court in *Keshrimal Jivji Shah and Anr. Vs. Bank of Maharashtra and Ors.*⁴ that transfer of immovable property in violation of an order of injunction or prohibition issued by Court of law, confers no right, title or interest in the transferee, as it is no transfer at all. Mr.Tamboli submitted that the transferee cannot be allowed to reap advantage or benefit from such transfer merely because he is not party to the proceedings in which order of injunction or other prohibitory direction or restraint came to be issued. It is enough that the transferor is a party and the order was in force. Mr.Tamboli also submitted that if Applicant really wanted to participate in the proceedings, assuming for the sake of argument that the assignment deed was not hit by the order of injunction, Applicant should have stepped into the proceedings when the suit was pending and could not, at the appeal stage, attempt to join as a party.

3 (1995) 6 SCC 50

4 2004 (3) Mh.L.J. 893

7 On the submission of Mr.Kanade that the trial Court should not hold a detailed inquiry at the stage of granting of relief, Mr.Tamboli submitted that an inquiry to ascertain whether the assignment deed exists or should be construed as a nullity or illegality would not amount to holding a detailed inquiry. Mr.Tamboli also submitted that in any event as held by the Apex Court in *Surjit Singh* (Supra) the Court has the duty, as also the right, to treat the alienation/assignment having not taken place at all for its purposes.

8 Mr.Sawant adopted the submissions of Mr.Tamboli.

9 Having heard the counsels, in our view, the Applications require to be rejected.

10 The applications have been made in these appeals. But the alleged assignment in favour of applicant took place, admittedly during the pendency of the suit, not during the pendency of these appeals. Therefore, the application under Order XXII Rule 10 cannot be sustained. We find support in *Saila Bala Dassi* (Supra) where the Apex Court on similar facts and circumstances held that the Application under Order XXII Rule 10 was not maintainable. This was

because even in *Saila Bala Dassi* (Supra), the Appellant, though had acquired rights when the suit was pending, chose to apply under Order XXII Rule 10 during the Appeal stage. In paragraph 7, the Apex Court held:

“7.....

But it is contended for the first respondent that even if Suit No. 158 of 1935 is considered as pending when the transfer in favour of the appellant was made, that would not affect the result, as no application had been made by her to be brought on record in the original court during the pendency of the suit. Nor could the application made to the appellate Court be sustained under O. 22, R. 10, as, the transfer in favour of the appellant was made prior to the filing of that appeal and not during its pendency. This contention appears to be well-founded;”

(Emphasis supplied)

As noted earlier, even in the case at hand, the Application is being made at the stage of Appeal when the alleged assignment in favour of Appellant was made prior to the filing of the Appeal and not during its pendency.

11 If Order XXII Rule 10 would not apply, then certainly, the Judgment of the Apex Court in *Amit Kumar Shaw* (Supra) that under Order XXI Rule 10 no detailed inquiry at the stage of granting leave is contemplated would not be applicable. In any case, as submitted by Mr. Tamboli, an inquiry to ascertain whether the assignment deed exists

or should be construed as a nullity or illegality would not amount to holding a detailed inquiry.

12 Coming to the indisputable fact that the order of injunction against Defendant No.1 passed on 14th November 2006 (and is in force even today) was in force when the deed of assignment dated 13th January 2007 relied upon by Applicant, was entered into, Mr.Kanade submitted that Applicant was not a party to the suit. That would not serve the cause of applicant. This is because, Respondent No.6 and also Respondent No.1 were parties to the deed of assignment and they were parties to the suit. Both Respondent Nos.1 and 6 have signed the deed of assignment though according to Mr.Tamboli Respondent No.6 by signing on behalf of Respondent No.1, has misused the power of attorney given in favour of Respondent No.6 by Respondent No.1. Further, the Division Bench of this Court in *Keshrimal Jivji Shah* (Supra) relying on *Surjit Singh* (Supra) held that the transfer of immovable property in violation of an order of injunction, or prohibition issued by Court by law, confers no right, title or interest in the transferee, as it is no transfer at all. The Court held that such a transfer would be a nullity.

Paragraphs 26, 27 and 28 of *Keshrimal Jivji* (Supra) read as under:

“26. We cannot accept Shri Naphade's contention that observations of the Supreme Court in the case of Surjeet Singh should be read as restricted to proceedings under Order 22, Rule 10 of Civil Procedure Code and the same cannot be extended to defiance of injunction order issued under Order 39, Rule 1 of Civil Procedure Code. Once the issue is placed on the pedestal of public policy and the very faith of litigants in Rule of law and administration of justice, then it is not possible to make the distinction or bifurcation suggested by Shri Naphade. It would mean that consequences of nullifying such transaction not being provided by the Statute, it would not lose its legal efficacy even if it is in utter disregard to or in violation of or breach of prohibitory order or order of injunction issued by a Court of law. It would mean that parties can breach and violate Court orders openly and with impunity and neither they nor the beneficiaries suffer any consequences. It is time that we recognise the principle that transfer of immovable property in violation of an order of injunction or prohibition issued by Court of law, confers no right, title or interest in the transferee, as it is no transfer at all. The transferee cannot be allowed to reap advantage or benefit from such transfer merely because he is not party to the proceedings in which order of injunction or other prohibitory direction or restraint came to be issued. It is enough that the transferor is a party and the order was in force. These two conditions being satisfied, the transfer must not be upheld. If this course is not adopted then the tendency to flout orders of Courts which is increasing day by day can never be curbed. The Court exercises its powers on the foundation of respect and regard for its authority by litigating public. People would lose faith and respect completely if the Court does not curb and prevent this tendency. The note of caution of the Supreme Court must be consistently at the back of everybody's mind. Therefore, Shri Naphade is not right in the distinction which he is trying to make.

*27. Equally untenable is the contention of Shri Naphade that an order of injunction will bind only the transferor in this case. It is his submission that the said order does not bind the world at large. He submits that ownership rights are neither taken away nor restricted in any manner by order of injunction or other preventive directions. He submits that the transfer in favour of his client was thus neither invalid nor illegal, leave alone null and void. For the reasons already recorded above, we find it difficult to accept this contention of Shri Naphade. Decision of the Supreme Court in the case of *Krishan Kumar Narula v. State of Jammu**

and Kashmir, reported in AIR 1967 SC 1386 has no application. There, the Supreme Court was distinguishing an order of stay from an order of injunction. The distinction was made in the context of consequences upon breach and violation of such orders. It is in that context that the Supreme Court observed that the order of stay is qua a Court, whereas an order of injunction reaches and touches a party to the lis. These observations cannot be applied when it is noticed that during the pendency of an order of injunction, immovable property, which is subject matter of restraint or injunction, is transferred. When this course is admittedly adopted, then there is no choice but to declare the transaction as illegal. There is no question of then deciding the nature and effect of the order of injunction.

28. Mr. Naphade's submissions overlook the effect of an order of injunction. An order issuing interlocutory injunction is issued with a view to preserve and protect status quo during the pendency of the suit or litigation. The true effect of such an order is, therefore, preservation of status quo prevailing as on the date of issuance of the order. Any alteration in the status quo as prevailing and directed to be maintained by the Court of law is not permissible except with leave or sanction of Court. It is well settled that if Courts are not to honour and implement their own orders and encourage party litigants, be they public authorities, to invent methods of their own to short circuit and give a go by to the obligations and liabilities incurred by them under orders of Courts, the rule of law will become casualty in the process - a consequence to be jealously averred by all and at any rate by the highest Courts in the State."

(Emphasis supplied)

13 Paragraph 4 of *Surjit Singh* (Supra) reads as under:

"As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. It is per se property, for it relates to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable difference whether property per se had been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat

the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders. The principles of lis pendens are altogether on a different footing. We do not propose to examine their involvement presently. All what is emphasised is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit. On that basis, there was no cause for going into the question of interpretation of paragraphs 13 and 14 of the settlement deed. The path treaded by the courts below was, in our view, out of their bounds. Unhesitatingly, we upset all the three orders of the courts below and reject the application of the assignees for impleadment under Order 22 Rule 10 C.P.C.”

(Emphasis supplied)

14 Therefore, since the deed of assignment has been entered into in defiance of an injunction order, Applicant cannot claim to be impleaded as party on the basis of the said assignment. In fact, in *Surjit Singh* (Supra), the facts were almost similar, where there was an assignment by means of registered deed and the assignment happened after an order of injunction was passed. The Court observed that in defiance of the restraint order, the assignment was made like in the case at hand. If we let it go as such, it would defeat the ends of justice and the prevalent public policy. This Court, in the circumstances, has the duty, as also the right, to treat, the deed of assignment having not taken place at all for its purposes.

15 Mr.Kanade also submitted that when a decree has been passed in the suit holding that the said property was not the ancestral property but self acquired property of Respondent No.1, the interim order of injunction would have merged with the decree, and, therefore, the deed of assignment would not be a nullity. We do not agree with Mr.Kanade's submission because when the deed of assignment was entered into there was an order of injunction in force. Therefore, on the day when the deed of assignment was entered into itself, the said deed of assignment was a nullity or an illegality. We also have to note that though in the decree impugned in the Appeal, the trial Court has come to a conclusion that the said property was not the ancestral property but self acquired property of Respondent No.1, the order of injunction granted in 2006 continues even during the pendency of this First Appeal. Therefore, the stay has always been in force.

16 Therefore, when such a deed of assignment is treated as not having taken place at all, the question of considering Mr.Kanade's alternative submission under order 146 of the CPC would not arise. In any event, under Section 146 of the CPC, it only provides that any

proceedings which can be taken by a person may also be taken by any person claiming under him. In the Application it is not Applicant's case that he is claiming under the assignment made by Respondent No.6 or to be substituted as Respondent No.6. Moreover, if the document on which applicant is relying upon itself is nullity, the question of Applicant claiming under Respondent No.6 also would not arise.

17 Application dismissed with costs in the sum of Rs.2,00,000/-. The amount to be paid to Free Ophthalmic Hospital Society, as donation within four weeks from the date this judgment is uploaded. The account details are as under :

Bank Account of Hospital	:	Free Ophthalmic Hospitals Society
Bank Account Number of Hospital	:	99350100003339
Bank and Branch	:	Bank of Baroda, Parel Branch
Address, Tel. No., Fax No. and e-mail of the concerned Bank	:	Bank of Baroda, Madina Manzil, 88, Dr. Ambedkar Road, Mumbai – 400 012, Maharashtra, 022-24713820, dbpare@bankofbaroda.com
MICR Code Number	:	400012246
IFSC Number	:	BARB0DBPARE (5TH Letter is Zero)
PAN	:	AAATF0397B
Type of Account	:	Saving A/C

18 Of course, we clarify that these observations above are restricted only to the present Application and this Appeal proceedings and would not come in the way of any proceeding that Applicant may choose to initiate individually against Respondent No.6 or any other party.

19 All rights and contentions of all parties are kept open.

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In view of what is recorded above, Mr.Jadhav sought leave of Court to withdraw this Application with liberty to take appropriate proceedings. Application dismissed as withdrawn with liberty as prayed for.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)