



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 484 OF 2023
WITH
INTERIM APPLICATION NO.12952 OF 2023**

- | | | |
|----|-----------------------------------|---|
| 1. | Baburao Shivputra Erandole | } |
| | Age: 56, Occu : Nil | } |
| 2. | Sanjay Shivputra Erandole | } |
| | Age: 49, Occu : Service | } |
| 3. | Laxmibai Shivputra Erandole | } |
| | Age:76, Occ: Household | } |
| | All residing at R.S. No.2370 | } |
| | Sambha Talim Opp. Shivaji Sangh | } |
| | Brahmanpuri Miraj, Dist. Sangli | } |
| 4. | Shriniwas Shivputra Erandole | } |
| | Age :54, Occ: Business | } |
| | Residing at Vinayak stores | } |
| | Kumbhargalli, Kavathemahankal | } |
| | Tal. Kavthemahankal, Dist. Sangli | } |

.. Appellants

Versus

- | | | |
|----|-----------------------------------|---|
| 1. | Kumar Adwait Nikhil Erandole, | } |
| | Age 7 years, Occ :Nil, | } |
| | Through hismother who is also his | } |
| | natural guardian | } |
| | Sou. Shubhangi Nikhil Erandole, | } |
| 2. | Sou. Shubhangi Nikhil Erandole, | } |
| | Age :35 years, Occ: Nil | } |
| | Residing at C/O. Babasaheb Patil, | } |
| | Jannat, Tal. Nipani, | } |
| 3. | Shri. Nikhil Siddhapa Erandole | } |
| | Age : 36 years, Occ: Business & | } |
| | Agriculture, | } |

4. Shri. Sidhappa Babu Erandile }
Age: 81 years, Occ:Agriculture, }
Respondent Nos.3 & 4 residing at }
S. No.2370, Sambha Talim, }
Opposite Shivaji Sangh, }
Brahmanpuri Miraj, }
Tal. Miraj, Dist. Sangali }
5. Shri. Ajay Chintamani Chauthai, }
6. Age :52 years, Occ: Business, }
7. Dr. Sou. Kavita Ajay Chauthai, }
8. Age :50 years, Occ: Business, }
9. Shri. Mukund Aappa@ }
10. Appaso Sagare }
11. Age:54 years, Occ:Business }
12. Shri. Gaurav Mukund Sagare, }
13. Age :34 years, Occ: Business, }
14. Shri. Arvind Aappa@ }
15. Aappaso Sagare, }
16. Age:52 years, Occu: Business, }
17. Respondent Nos.5 to 9 residing at }
18. Near B.S.N.L. Tower, }
19. Kavatemahakal, Tal. Kavatemahakal }
20. Dist. Sangli, }
21. Shri. Vikrant Vasant Rao Devangswami }
22. Age :52 years, Occ: Business, }
23. Sou. Savita Vikrant Devangswami, }
24. Age: 47 years, Occ: Business, }
25. Respondent Nos. 12 & 13, Yashwant Colony, }
26. Durga Nagar Audyogik Vasahat Miraj, }
27. Tal. Miraj, Dist. Sangali 416410 }
28. Dr. Shri Ravi Marutirao Raval, }
29. Age: 49 years, Occ:Doctor, }
30. Dr. Sou. Sumitra (Sunetra) Ravi Raval }
31. Age:45 years, Occ: Doctor }
32. Respondent No.12 &13 residing at }
33. Tal. Miraj, Dist. Sangali 416410 }
34. Shri. Raghvendra Satappa Byakodi, }
35. Age: 48 years, Occ: Doctor, }
36. Shri. Sanjay Satappa Byakodi, }
37. Age :48 years, Occu: Doctor }
38. Respondent Nos. 14 & 15 residing at }

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|-----|--|---|
| | Plot No.10/3, Mangalvarpeth, | } |
| | Miraj, Tal. Miraj Dist. Sangali 416410 | } |
| 16. | Shri. Prakash Dattatray Powar, | } |
| | Age : 43 years, Occ:Nil, | } |
| 17. | Sou. Smita Prakash Powar | } |
| | Age: 40 years, Occ:Nil, | } |
| | Respondent No.16 & 17 R/at | } |
| | Plot No.9/2, Plot No.9/4, | } |
| | Mangalvarpeth, Miraj, | } |
| | Tal. Miraj, Dist. Sangali 416410 | } |
| 18. | Shri. Malgonda Bharteshwar Bagane, | } |
| | Age 61 years, Occ: Nil | } |
| | Residing at Plot No.10/4 | } |
| | Miraj, Tal: Miraj Dist : Sangali | } |
| | 416410 | } |
| 19. | Shri. Wilyam Anand Esapure, | } |
| | Age :66 years, Occ :Nil, | } |
| 20. | Sou. Saramma Wilyam Esapure, | } |
| | Age :59 years, Occu: Nil | } |
| 21. | Shri Anil Wilyam Esapure, | } |
| | Age :31 years, Occ: Nil | } |
| | Respondent Nos. 19 to 21 | } |
| | Residing at Survey No.11/12, | } |
| | Miraj, Dist. Sangali. | } |

...Respondents

**AND
APPEAL FROM ORDER NO.500 OF 2023
WITH
INTERIM APPLICATION NO.12975 OF 2023**

Siddhappa Babu Erandole

.. Appellant

Versus

Adwait Nikhil Erandole & Ors.

.. Respondents

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Mr.Mr. A. M. Kulkarni i/by Mr. Sarthak S. Diwan, Mr. Advocate for the Appellant In AO/500/2023.

Mr. Tejas D. Deshmukh a/w Ms. Sulagna S. Mohanty Ms. Kshema Mahuli, Mr. Anshuman Deshmukh Advocates for the Appellant in AO/484/2023

Mr.S.S. Patwardhan i/by Mr. Mrinal Shelar, Advocates for Respondent Nos. 1 & 2. (In AO/484/2023 & AO/500/2023).

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CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 18 OCTOBER 2023

PRONOUNCED ON : 26 OCTOBER 2023

JUDGMENT

1. Challenge in the present appeals is to the order dated 4th February 2022 passed by learned 3rd Joint Civil Judge Senior Division, Sangli allowing application at Exhibit-5 for grant of temporary injunction. By its order, the Trial Court has restrained the Defendants from creating third party rights or changing nature of the suit property during pendency of the suit.

2. Plaintiff No. 2 is the estranged wife of Defendant No.1. Plaintiff No.1 is her son, who was aged 5 years on the date of

filing of the suit. Plaintiffs have filed Special Civil Suit No.387 of 2021 in the Court of Civil Judge, Senior Division, Sangli for partition of the suit properties. As per the family tree pointed out in para 2 of the plaint, Babu had 6 children - two sons named Shivputra and Siddhappa and four daughters. After death of Babu, the suit property would have devolved on the two sons and 4 daughters. However, it appears that the 4 daughters have executed Release Deed releasing their rights in respect of the suit properties. It is Plaintiff's case that on account of release of rights by 4 sisters, the two brothers Shivputra and Siddhappa are entitled to $\frac{1}{2}$ share each in the suit property. As per the family tree, Shivputra has three sons and Siddhappa has one son. Siddhappa's son Nikhil is the husband of the Plaintiff No.2- Shubhangi. Plaintiff No.1-Adwait is son of Nikhil and Shubhangi. This is how, Plaintiff Shubhangi claims $\frac{1}{6}$ th share of Adwait in the suit properties. It appears that some of the suit properties have been transferred in favour of various purchasers (Defendant Nos.7 to 23) from time to time. Therefore, in addition to seeking partition of the suit properties by impleading Nikhil, his father Siddhappa as well as the entire branch of Shivputra, Plaintiffs have also challenged various sale deeds executed in

favour of Defendant Nos.7 to 23. In that suit, Plaintiff filed Application at Exhibit-5 seeking temporary injunction. It appears that she additionally filed application at Exhibit-92 seeking *status-quo* in respect of the suit properties. The Trial Court has passed order dated 4th February 2022 granting temporary injunction in favour of Plaintiff restraining all the Defendants, from selling or creating any third party rights or changing nature of suit property during pendency of the suit. Defendant No.2 Siddhappa is aggrieved by the decision of the Trial Court and has instituted Appeal from Order No.500 of 2023. Similarly, the branch of Shivputra is also aggrieved by the decision of the Trial Court and they have instituted Appeal from Order No. 484 of 2023. Both the Appeals are taken up for hearing together.

3. Mr. Kulkarni would appear on behalf of the Appellant - Siddhappa in Appeal from Order No.500 of 2023. He would draw my attention to the written statement filed by the Defendant No.2-Siddhappa denying existence of joint Hindu family. He has contended that the suit properties have been inherited by Siddhappa towards his hereditary rights from late Babu Erandole. That during the lifetime of Defendant No.2-Siddhappa,

no right is yet created in favour of Defendant No.1-Nikhil. That therefore there is no question of his grandson (Plaintiff No.1) seeking partition of the suit properties. Mr. Kulkarni would further submit that, in any case, release of rights of their respective shares by sisters in Siddhappa's favour by execution of release deeds, make those shares self-acquired property of Siddhappa, in which his son or grandson cannot claim any right. That such release is not executed by the sisters in favour of son-Nikhil or grandson-Adwait. Therefore neither Nikhil nor Adwait would have any right in those shares relinquished in Siddhappa's favour. He would submit that the frame of the suit itself is faulty and in such circumstances, no temporary injunction could have been granted in favour of the Plaintiffs. He would further submit that the prayer for setting aside sale deeds is barred by limitation and in such circumstances, there was no question of granting any temporary injunction in Plaintiffs' favour. He would further submit that even if it is assumed that the suit properties are joint family properties, a coparcener cannot be seek any injunctive relief against another coparcener.

4. Mr. Kulkarni would further submit that the suit is filed with *malafide* intention of pressurising Defendant No.1-Nikhil to settle the matrimonial disputes between husband and wife. That Defendant No.2 has no connection with those matrimonial dispute between the husband and wife and is unnecessarily roped in the Suit. That, the suit is filed after an unsuccessful attempt by Plaintiff No.2 in securing an order of maintenance against her husband. That in such circumstances, the Trial Court ought to have appreciated the real intention of Plaintiff No. 2 in filing the suit and ought to have rejected the application for temporary injunction.

5. Mr. Deshmukh would appear on behalf of Appellants in Appeal from Order No. 484 of 2023, representing the branch of legal heirs of Shivputra. He would submit that legal heirs of Shivputra have absolutely no connection with the disputes amongst the legal heirs of Siddhappa. That, for dispute amongst the family of Siddhappa, Shivputra's family cannot be made to suffer. That, for securing the alleged rights of Plaintiff No.1 (who is still a minor), the entire suit property is frozen on account of grant of temporary injunction. That, since Plaintiffs do not claim

any right in respect of land coming to the share of Shivputra, they cannot seek any injunction against the Appellants in A.O. No.484 of 2023. He would pray for setting aside the impugned order passed by the Trial Court.

6. *Per Contra*, Mr. Patawardhan the learned counsel appearing for Plaintiffs would submit that the suit properties are undisputedly joint family properties, which are yet to be partitioned. Being a coparcener, Plaintiff No.1 has a right to seek partition of the suit properties. That, on account of release of their respective shares by the sisters, the suit properties would devolve on Shivputra and Siddhappa in $\frac{1}{2}$ share each. That, such $\frac{1}{2}$ share would further be divided between Siddhappa ($\frac{1}{6}$), Nikhil ($\frac{1}{6}$) and Adwait ($\frac{1}{6}$). This is how Plaintiff-Adwait has claimed $\frac{1}{6}^{\text{th}}$ share in the joint family properties. Mr. Patawardhan would further submit that Plaintiff No.2 has been driven out of the house and she has no means to maintain herself and her son. That, Defendants are attempting to dispose of the joint family properties to the exclusion of the rights of Plaintiff No.1. That, in such circumstances, the Trial Court has rightly granted temporary injunction restraining

Defendants from creating third party rights in the suit properties. He would pray for dismissal of the appeals.

7. Rival contentions of parties fall for my consideration.

8. This is a unique case where a five year old son and his mother have sued father, grandfather and other family members seeking partition of suit properties. The issues whether Plaintiff No.1 Adwait would ultimately succeed in establishing that the entire suit properties are joint family properties and whether he would receive any share in those properties and the exact quantum of the share which would be allotted to him, are something which can only be decided at the time of final adjudication of the suit. At this juncture, this Court is concerned with the limited issue as to whether the temporary injunction could have been granted in favour of Plaintiffs.

9. If theory of Plaintiffs about existence of joint family between Plaintiffs and Defendants and properties being undivided joint family properties is to be accepted, Plaintiff-

Adwait and other Defendants would be coparceners. The issue is whether one coparcener can seek injunctive relief against other coparceners. No doubt a coparcener is entitled to seek partition of the undivided joint family property. However, whether the other coparceners can be enjoined from dealing with the suit properties during adjudication of the claim raised by the one of the coparceners is something that would be the key to answer the question raised in present appeals. To answer the question, it would be necessary to discuss the law on the subject.

10. In *Sunil Kumar v. Ram Parkash*, (1988) 2 SCC 77 the Apex Court has held as under:

*6. In this appeal we are called upon to decide the only question whether a suit for permanent injunction restraining the karta of the joint Hindu family from alienating the house property belonging to the joint Hindu family in pursuance of the agreement to sell executed already in favour of the predecessor of the appellants, Jai Bhagwan, since deceased, is maintainable. It is well settled that in a joint Hindu Mitakshara family, a son acquires by birth an interest equal to that of the father in ancestral property. **The father by reason of his paternal relation and his position as the head of the family is its Manager and he is entitled to alienate joint family property so as to bind the interests of both adult and minor coparceners in the property, provided that the alienation is made for legal necessity or for the benefit of the estate or for meeting an antecedent debt. The power of the Manager of a joint Hindu family to alienate a joint***

Hindu family property is analogous to that of a Manager for an infant heir as observed by the Judicial Committee in *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree* [(1856) 6 Moo IA 393 (PC)] :

“The power of a Manager for an infant heir to charge ancestral estate by loan or mortgage, is, by the Hindu Law, a limited and qualified power, which can only be exercised rightly by the Manager in a case of need, or for the benefit of the estate. But where the charge is one that a prudent owner would make in order to benefit the estate, a bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred, in the particular instance, or the criteria to be regarded. If that danger arises from any misconduct to which the lender has been a party, he cannot take advantage of his own wrong to support a charge in his favour against the heir, grounded on a necessity which his own wrong has helped to cause.

A lender, however, in such circumstances, is bound to inquire into the necessities of the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the Manager is acting in the particular instance for the benefit of the estate. If he does inquire, and acts honestly, the real existence of an alleged and reasonably-credited necessity is not a condition precedent to the validity of his charge, which renders him bound to see to the application of the money.”

7. At the outset it is to be noticed that in a suit for permanent injunction under Section 38 of the Specific Relief Act by a coparcener against the father or Manager of the joint Hindu family property, an injunction cannot be granted as the coparcener has got equally efficacious remedy to get the sale set aside and recover possession of the property. Sub-section (h) of Section 41 of Specific Relief Act bars the grant of such an injunction in the suit. Secondly, the plaintiff-respondents brought this suit for permanent injunction restraining their father, Defendant 1, from selling or alienating the property to Defendant 2 or any other person and also restraining Defendant 2 from proceeding with the suit for specific performance of the agreement to sell pending in the civil court. Thus the relief sought for is to restrain by permanent injunction the karta of

the joint Hindu Mitakshara family i.e. Defendant 1 from selling or alienating the house property in question. Defendant 1 as karta of the joint Hindu family has undoubtedly, the power to alienate the joint family property for legal necessity or for the benefit of the estate as well as for meeting antecedent debts. The grant of such a relief will have the effect of preventing the father permanently from selling or transferring the suit property belonging to the joint Hindu Undivided Family even if there is a genuine legal necessity for such transfer. If such a suit for injunction is held maintainable the effect will be that whenever the father as karta of the joint Hindu coparcenary property will propose to sell such property owing to a bona fide legal necessity, any coparcener may come up with such a suit for permanent injunction and the father will not be able to sell the property for legal necessity until and unless that suit is decided.

(emphasis supplied)

Though the question before the Apex Court in **Sunil Kumar** was about maintainability of a suit filed by a coparcener seeking permanent injunction against a Karta/Manager, the judgment throws light on right of the Karta to alienate the property including share of an infant coparcener.

11. In **Ramesh Damodhar Deshmukh v. Damodhar Domaji Deshmukh**, (1999) 1 Mah LJ 153, this Court held as under:

10. The above referred observations of the Apex Court in no uncertain terms, convey that the coparcener does not have a right to interfere with the act of management of the joint family

affairs and, therefore, he cannot move the Court to grant relief of injunction restraining the Karta from alienating the coparcenary property. The coparcener only has a right to claim share in the joint family estate free from unnecessary and unwanted encumbrances. In the circumstances of this case, it is not possible to hold at this stage that the applicant has made out a *prima facie* case for grant of injunction. Similarly, irreparable loss, if any, would be caused to the non-applicant No. 1 if injunction as prayed for is granted. Hence, the findings arrived at by lower appellate Court are just and proper and same are sustainable in law. Therefore, civil revision application is dismissed. Interim order, if any, stands vacated. No order as to costs.

12. Thus, it is highly debatable whether Master Adwait is in a position to seek final relief of injunction against Siddhappa and Nikhil from alienating the suit properties. In such circumstances, grant of temporary injunction would be avoidable.

13. Additionally, there are several disputes in the present suit amongst parties. It is the contention of Defendant No.2 Siddhappa that he has succeeded to his share of the suit properties as a son of late Babu Erandole and that during his lifetime, his son Nikhil cannot claim any share in Siddhappa's property. It is further contended that since Nikhil himself cannot claim right any property, there is no question of grandson Adwait staking any claim in such properties. Though this defence *prima facie* does not appear to be too convincing in

absence of proof of any partition, the same will have to be considered and decided at the time of final hearing of the suit. There is also other dispute about relinquishment of rights by sisters. It is Siddhappa's case that sisters have relinquished their rights in Siddhappa's favour and not in favour of Nikhil or Adwait. It is his case that even if suit properties are showed to be joint family property, the share released in Siddhappa's favour becomes Siddhappa's self-owned property, in which neither Nikhil nor Adwait can claim any share. On the basis of this contention, it is submitted that share of Adwait would be much less than 1/6 share in the suit properties.

14. There are other issues as to whether the other branch of Shivputra can be restrained by any injunctive orders pending adjudication of rights of Adwait, which flow through the branch of Siddhappa. It is the claim of Shivputra's branch that Plaintiff-Adwait does not claim any share through Shivputra and therefore Shivputra and his legal heirs must be allowed to enjoy or deal with their share in the suit properties. The next issue is about various sale transactions effected prior to the filing of the suit. As pleaded in the plaint, the marriage between Plaintiff

No.2 and Defendant No.1 was solemnized in the year 2016. Before solemnization of marriage between Shubhangi and Nikhil and before the birth of Adwait, sale transactions in respect of the suit properties have taken place during the years 2013 to 2015. Plaintiffs are seeking cancellation of those sale transactions which took place before birth of Adwait by filing the suit in the year 2021. Whether challenge to such transactions would be maintainable after passage of substantial period of time is yet another issue which will have to be considered by the Trial Court at the time of final hearing of the suit. The purchasers of those transactions are also impleaded as Defendants in the suit and they are also restrained from creating third party rights or changing nature of lands purchased by them. It therefore really becomes debatable as to whether Adwait, born after the year 2016, would ultimately succeed in getting the sale deeds of the year 2013 set aside in his suit for partition.

15. Another angle sought to be given to the entire dispute by the Appellants is that Plaintiff No.2-Shubhangi is attempting to settle her matrimonial disputes by deliberately filing the suit for

partition. Plaintiffs have averred in the plaint that Plaintiff No.2 was driven out of matrimonial house when Plaintiff No.1 was only 9 months old on 19th October 2017. She has thus cohabited with Nikhil for just one year. Whether she is entitled to maintenance and other reliefs against her husband is something which would be decided in the matrimonial proceedings pending between the parties. She has staked a claim in the joint family property for seeking partition and separate possession in favour of her son Adwait. In this background, whether the other coparceners of alleged joint hindu family can be restrained from dealing with their shares in the suit properties pending adjudication of claim of Plaintiff-Adwait becomes debatable. In my view therefore during pendency of adjudication of claim of Plaintiff, a blanket injunction could not be granted against of Defendants by restraining them from creating third party rights in the suit properties. In the event, Plaintiff-Adwait ultimately succeeding in the suit, if any third party rights are created by the Defendants during the pendency of the suit and if the remainder of land does not satisfy share allotted to Plaintiff-Adwait, the sale deeds executed in respect of lands coming to his share would not

be binding on him. In my view therefore the Trial Court has erred in granting a blanket injunction against all the Defendants by restraining them from creating third party rights in the suit properties. The Trial Court has thus erred in passing the impugned order.

16. Mr. Kulkarni has fairly made a statement that the Appellant-Siddhappa is willing to keep land bearing City Survey No.11/1/1 admeasuring 1543 square meter unencumbered during pendency of the suit. Mr. Patwardhan is quick enough to object to the proposal stating that Plaintiff's 1/6th share would warrant allocation of much higher area of land. In my view, since Plaintiff-Adwait cannot restrain other coparceners from alienating the suit properties, instead of lifting the injunction in its entirety, interest of the Plaintiff-Adwait would be secured, atleast to some extent, if Appellants are directed not to create third party interests or part with possession in respect of land at City Survey No.11/1/1 admeasuring 1543 square meters.

17. Accordingly, impugned order dated 4th February 2022 passed by the 3rd Joint Civil Judge Senior Division, Sangli is modified to the extent that Defendants are refrained from creating any third-party interest or changing nature or parting with possession only in respect of the land at CTS No.11/1/1 admeasuring 1543 square meter.

18. With the above directions, the Appeals are disposed of.

19. Accordingly, the appeals succeed. Order on application at Exhibit-5 and Exhibit-92 is set aside.

20. Since the appeal is disposed of nothing survives in the interim applications and the same are also disposed of.

SANDEEP V. MARNE, J

21. After the judgment is pronounced, the learned counsel for the Respondent Nos. 1 & 2 would pray for continuation of the

injunction order dated 04.02.2022. Considering the nature of findings recorded in the judgment, the request is rejected.

SANDEEP V. MARNE, J