



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
AURANGABAD BENCH, AURANGABAD.

APPEAL FROM ORDER NOS.30 AND 31 OF 2022

APPEAL FROM ORDER NO.30 OF 2022

1. Salma Asgarali Makati, Age – 79,
Occ.Housewife, R/o Crystal Heights
Building, Flat No.15, Survey No.62,
Hissa No.10, Road No.10, Sai Baba
Nagar, Pune – 411048
2. Bakirhussain Samsuddin Pachorawala,
Age – 77, Occ. Retired, R/o 78/A, 1st
Road, 701, Narsinh Sadan, Near Khar
Subway, Santacruz (East), Mumbai –
400 055
3. Zarina Mansurali Arsiwala, Age – Adult,
Occ-Housewife, R/o Manmandir, 3rd
floor, JVD Scheme Andheri (w), Mumbai
– 58
4. Farida Abdullah Electricwala Since
deceased hence through Legal
Representatives
- 4a) Hozefa Abdullah Electricwala, Age –
Adult, Occ- Business
- 4b) Tasnim Abdullah Electricwala, Age –
Adult, Occ – Business, R/o Sujata
Apartment, Gunpowder Lane, Mazgaon,
Mumbai – 10.

(Original Defendant Nos.1, 2, 8 & 9(i)
and (ii))

... APPELLANTS

VERSUS

1. M/s. Raj Bucket Factory, A registered Partnership Firm, having Registration No.BA-51907 (old reg. Of 1969 No.BA-57396), having registered Off.At-58-B, Maulana Azad Road, Rangwala Compound, Jacob Circle, Byculla, Mumbai – 400 008, Through Senior Partner.

Having Partners

- A] Sabbir Samsuddin Pachorawala, Age-67, Occ-Business/Farming
 - B] Shamim Sabbir Pachorawala Age – 59, Occ- Business/Farming
 - C] Ebrahim Sabbir Pachorawala, Age – 34, Occ-Business
 - D] Mohammad Sabbir Pachorawala, Age-32, Occ-Business
2. Sabbir Samsuddin Pachorawala, Age – 67, Occ-Business/Farming Resident of:c/o 58-B, Maulana Azad Road, Rangwala Compound, Jacob circle, Byculla, Mumbai – 400 008
...Ori. Plaintiffs
 3. Sadiqhusain Samsuddin Pachorawala, Age 75, Occ-Retired, R/o 32, CSI Compound 1st Cross Mission Road, 1st floor, Banglore – 560027
 4. Mufaddal Sadiqhussain Pachorawala, Age – 43, Occupation : R/o 301, Sterling Towers, Nesbit Road, Mazgaon, Mumbai – 400 010

5. M/s. Nirmal Seeds Pvt. Ltd., Near Anturli Phate, Village Bamrud, Pachora, Bhadgaon Road, Pachora, Dist. Jalgaon.
6. Ishwar Hukamichand Sanghavi, Age – 58, Occ- Business, R/o Pujari Nagar, Bhadgaon Road, Pachora, Dist. Jalgaon – 425 001
7. Vijaya Bank Ltd., Pachora, Branch Mamager, Gat No.136/2, Bhadgaon Road, Pachora, Dist. Jalgaon.
8. Samina Samsuddin Pachorawala, Since deceased hence through Legal Representatives.
- 8a) Zainab Noor Mohammed Unjhawala, Age : years, Occupation : Plot No.49, Sarrah Mansion, Flat No.201, 3rd florr, RTC Colony, Trimulgherry, Secundrabad 500 015, Telangana.
- 8b) Arva Murtuza Burhanpurwala, Age : years, Occupation : Flat No.5, Utbi Hsg, Society, B.T. Kawade Road, Uday Baug, Pune – 411 013
9. The Court Receiver of Bombay, High Court Bombay at Mumbai.

... RESPONDENTS

[Org. Defendants]

WITH

APPEAL FROM ORDER NO.31 OF 2022

1. Ishwar Hukamichand Sanghvi, Age : 68 years, Occu – Business, R/o Pujari Nagar, Bhadgaon Road, Pachora, Taluka

– Pachora, District – Jalgaon.

(Original Defendant No. 6)

... APPELLANT_

VERSUS

1. M/s. Raj Bucket Factory, A registered Partnership Firm, having Registration No.BA-51907 (old reg. of 1969 No.BA-57396), having registered Office at 58-B, Maulana Azad Road, Rangwala Compound, Jacob Circle, Byculla, Mumbai – 400 008.

Having Partners

- i] Sabbir Samsuddin Pachorawala, Age-69 years, Occ-Business, r/o 58-B, Maulana Azad Road, Rangwala Compound, Jacob Circle, Byculla, Mumbai – 400 008
 - ii] Shamim Sabbir Pachorawala Age – 61, years,Occ- Business/Farming, r/o 58-B, Maulana Azad Road, Rangwala Compound, Jacob Circle, Byculla Mumbai – 400 008
 - iii] Ebrahim Sabbir Pachorawala, Age – 36, years, Occ-Business, R/o 58-B, Maulana Azad Road, Rangwala compound, Jacob Circle, Byculla, Mumbai – 400 008.
 - iv] Mohammad Sabbir Pachorawala, Age-34 years, Occ-Business, R/o 58-B, Maulana Azad Road, Rangwala compound, Jacob Circle, Byculla, Mumbai – 400 008.
2. Sabbir Samsuddin Pachorawala, Age – 69 years, Occ-Business, R/o 58-B, Maulana Azad Road, Rangwala Compound, Jacob

circle, Byculla, Mumbai – 400 008

3. Salma Asgarali Makati, Age – 81 years, Occu. Household, R/o Crystal Heights Building, Flat No. 15, Survey No.62, Hissa No. 10, Road No. 10, Sai Baba Nagar, Pune – 411 048, Dist. Pune.
4. Bakirhusain Samsuddin Pachorawala, Age : 79 years, Occu. Business, R/o 78/A, First Road, 701, Narsinh Sadan, Near Khar Subway, Santacruz (E), Mumbai – 400 055.
5. Sadiqhusain Samsuddin Pachorawala, Age 77, Occ-Retired, R/o 32-CSI Compound 1st Cross Mission Road, 1st floor, Banglore – 560 027, Taluka & Dist. Banglore (Karnataka).
6. Mufaddal Sadiqhussain Pachorawala, Age – 47 years, Occupation : Business, R/o 301, Sterling Towers, Nesbit Road, Mazgaon, Mumbai – 400 010
7. M/s. Nirmal Seeds Pvt. Ltd., Near Anturli Phate, Village Bamrud, Pachora, Bhadgaon Road, Pachora, Taluka Pachora, Dist. Jalgaon.
8. Vijaya Bank Ltd., Pachora, through its Branch Manager, Gat No.136/2, Bhadgaon Road, Pachora, Taluka – Pachora, District Jalgaon.
9. Zarina Mansurali Arsiwala, Age : 78 years, Occu. Household, R/o Manmandir, 3rd floor, JVD Scheme, Andheri (W), Mumbai – 400 058

10. Farida Abdullah Electricwala, Deceased through her legal representatives
- 10A.Hozefa Abdullah Electricwala, Age : 55 years, Occ. Business, R/o Sujata Apartment, Gunpowder Lane, Mazgaon, Mumbai – 400 010
- 10B.Tasnim Abdullah Electricwala Age : 52 years, Occu. Business, R/o Sujata Apartment, Gunpowder Lane, Mazgaon, Mumbai – 400 010
11. Samina Samsuddin Pachorawala, Deceased through her Legal Representatives.
- 11A.Zainab Noor Mohammed Unjhawala, Age : 58 years, Occupation : Household, R/o Plot No.49, Sarrah Masion, Flat No.201, 3rd floor, RTC Colony, Trimulgherry, Secunderabad 500 015, District – Secunderabad (Telangana).
- 11B.Arva Murtuza Burhanpurwala, Age : 55 years, Occupation : Household, R/o Flat No.5, Qutbi Housing, Society, B.T. Kawade Road, Uday Baug, Pune – 411 013, District Pune.
9. The Court Receiver of Bombay, High Court of Judicature, Bombay, Fort, Mumbai, Dist. Mumbai.

... RESPONDENTS

[No.1 & 2 – Orig. Pltf.,
Nos. 1 & 2, Nos. 3 to 12-Orig.
Deft. Nos. 1 to 5 and 7 to 11.)

Appeal From Order No.30/2022

Mr. Mukul S. Kulkarni, Advocate for the appellants.

Mr. S.V. Natu, Advocate for the respondent no.1.

Mr. Mangesh G. Patil, Advocate for respondent no. 5.

Shri Girish Rane, Advocate for respondent no. 6.

Shri P.N. Kalani, Advocate for respondent no.7.

Shri C.K. Shinde, Advocate for respondent no.9.

Appeal From Order No.31/2022

Mr. Girish Rane, Advocate for the appellant.

Mr. S.V. Natu, Advocate for respondent no.1.

Mr. Mukul S. Kulkarni, Advocate for respondent nos. 3, 10-A, 10-B.

Mr. Mangesh G. Patil, Advocate for respondent no. 7.

Mr. P.N. Kalani, Advocate for respondent no.8.

Mr. C.K. Shinde, Advocate for respondent no. 12.

CORAM : SANDIPKUMAR C. MORE, J.

CLOSED ON : 29/08/2024

PRONOUNCED ON : 25/11/2024.

JUDGMENT :

Heard. **ADMIT.**

2. Both these appeals are directed against the order dated 01.09.2021 below Exhibit 6 in Special Civil Suit No.14/2019 passed by the learned 2nd Joint Civil Judge, Senior Division, Jalgaon (hereinafter referred to as 'the learned Trial Court'). The Appeal From Order bearing No.30/2022 is filed by the Original Defendant Nos.1, 2, 8, 9(i) and 9(ii) whilst Appeal From Order No.31/2022 is filed by the Original Defendant No.6 in the aforesaid Suit. The parties have referred as per

their status in the original suit for avoiding the ambiguity. Since both these appeals are filed against one and the same order, they are taken for disposal by a common judgment.

3. The Plaintiffs in the aforesaid suit have claimed declaration of their ownership over the lands bearing Gat Nos.76, 80, 81, 82, 134, 135, 136/1 and 136/2 situated at village Bamrud, Taluka Pachora, District Jalgaon (hereinafter referred to as 'the suit properties'). The plaintiffs are also claimed declaration in respect of the Sale-Deeds dated 18.08.2008, 29.04.2013, 08.12.2014, Agreement to Sale dated 29.09.2010 and the Rent Farming Agreement dated 24.05.2004 as the same are null and void and not binding upon them. They further claimed possession of the suit properties and recovery of arrears of compensation to the tune of Rs.1,96,55,419/- along with the interest @ 18% per annum from Defendant no.5 and also for mesne profits from Defendant nos.1 to 7. They also claimed perpetual injunction restraining Defendant nos. 1 to 7 from creating third party interest or making any construction on the suit properties. The Plaintiffs had, thus, filed the aforesaid Application Exhibit 6 for grant of temporary injunction restraining the Defendant nos. 1 to 7 from creating third party interest and restraining Defendant nos.5 to 7 from changing the nature of the suit properties and restraining Defendant no.2 from

disturbing possession of Plaintiffs over the farm house located on the suit properties.

4. The plaintiffs are claiming that deceased Samsuddin Essofaly Pachorawala along with Defendant nos.2 and 3 formed partnership vide indenture of partnership dated 28.04.1969. Though the plaintiff was minor at that time, he was admitted to the benefits of said Firm. The aforesaid suit properties were purchased by the plaintiff Firm through its Founder Partner Samsuddin in the individual names of his respective family members, but by utilizing funds of Partnership Firm. Thereafter, around 1980, the plaintiffs erected huge sheds for storage of crops and cattle etc. on the suit properties and also carried out development in respect of the same. After retirement of Defendant no.2 from the said Firm, his name was deleted from land records of Gat No.76 and 81 and name of Defendant no.4 was entered in his place for convenience. Defendant no.3 was expelled from the Firm in 1991-92, and accordingly, his name was deleted from the record of Gat No.82. The Defendant no.5 was appointed as a Care Taker of the suit properties on behalf of the Firm. The Firm purchased a property at Valsad, Gujrat in the year 1974-75 and expanded its business in the name and style as M/s Raj Sheet Metal Engineering Works. This property and business was given to Defendant no. 2 as his share in the

Plaintiff Firm.

5. The Plaintiff Firm then was reconstituted on 26.05.1978 and specific shares were allotted to deceased Samsuddin, Defendant no.3 and Plaintiff no.2 each as per the Partnership Deed dated 26.05.1978. Defendant no.3 acted contrary to the interest of Firm and therefore, Samsuddin and Plaintiff no.2 purchased his share in the Firm and the said partnership was determined. Under Partnership Deed dated 20.09.1991, the Firm was again reconstituted and shares were allotted in specific manner to Deceased Samsuddin, Plaintiff no.2 and two minor sons of Plaintiff no.2. The said Firm had taken over all the assets and liabilities of outgoing partners. Thereafter, from 09.06.1997, after demise of Samsuddin, his share was taken over by his wife and then several changes took place in the constitution of the Firm and currently Plaintiff no.2, his two sons Ebrahim and Mohammad and Shameem are partners of the Firm under Deed dated 30.03.2018.

6. It is further contended that consideration of the suit properties was debited from capital account of the partners of the Firm and not from the individual accounts of the partners. Deceased Samsuddin had no separate income source except business of the partnership firm. As such, the suit properties were in fact owned by the

Firm. However, certain alienation in respect of land Gat No.136 at the hands of Defendant nos.1 and 5 are illegal and not binding upon the Plaintiff Firm. Accordingly, the transaction of Gat No.82 at the hands of Defendant no.2 in favour of Defendant no.5 is also illegal and the act of Defendant no.5 converting the agricultural land no.136/2 for non-agricultural purpose and industrial purpose is also illegal.

7. However, it is contended that after withdrawal of Suit No.6882/2004 pending in the City Civil Court, Bombay, the Court Receiver handed over the possession of the suit properties wrongly to Defendant no. 2 instead of Plaintiff Firm. The Defendant nos.1 and 2 then started trying to disposed of the remaining suit properties by taking disadvantage of the fact that those were purchased in their individual names and carried out certain acts mentioned in the plaint. In respect of that, certain reports were lodged by the parties in the Police Station, Pachora, but the Police did not accept those reports. As such, the Plaintiffs were constrained to file the present suit for the reliefs mentioned above.

8. Defendant nos.6 and 7 remained absent and marked *ex-parte*, whereas the Plaintiffs have not claimed any relief of temporary injunction against Defendant nos.8 to 11. Defendant nos.1, 2, 8, 9(i)

and 9(ii), who are the Appellants in Appeal From Order No.30/2022 have resisted the Application Exhibit 6 by filing Say and Written Statement. According to them, the suit is barred by limitation and Gat No.135 out of the suit properties, was purchased by deceased Samsuddin in the name of his wife Sarabai from his own income. Further they claimed that certain lands out of the suit properties were their self acquired properties. They contended that Sale Agreement of Gat No.82 and 136 executed by Defendant nos.1 and 2 were challenged by the Plaintiffs in another R.C.S. No.50/2008 filed before the Court Civil Judge, Junior Division, Pachora, but the Application for temporary injunction in the said suit filed by the Plaintiffs was rejected and it was observed that, land Gat No.82 and 136 were not the properties of the Firm. With these avernments the aforesaid Defendants' prayed for rejection of application Exhibit 6.

9. Defendant nos.3 and 4 filed their Written Statement and also denied all the avernments made by the Plaintiffs. According to them, the Plaintiff Firm was dissolved secretly on 30.06.1991 without any notice to Defendant no.3 and he was not given any share from the properties of the Firm. According to him, new Firm could not have reconstituted. According to him, the Plaintiff Firm suppressed the orders of the Civil Judge, Junior Division, Pachora and the District

Court, Jalgaon under which it was observed that, the Plaintiff Firm had no right on the lands Gat No.136 and 82 out of the suit properties. Thus, he has also prayed for rejection of the application Exhibit 6.

10. Learned Trial Court after considering the material on record passed the impugned order and thereby restrained Defendant nos.1 to 7 from transferring and encumbering the suit properties and from creating third party interest and permanent developments in the suit property till the disposal of the suit.

11. Heard the rival submissions and also perused the entire documents on the record filed by the rival parties along with the impugned order.

12. Learned Counsel appearing for the Appellants in both the Appeals by referring voluminous documents argued at length. However, the gist of his argument is that the suit properties are not the properties of partnership Firm but the same are purchased individually by the earlier partners in their individual names by reducing their capitals in the partnership Firm for that purpose. He pointed out various documents and orders passed in the earlier litigation in respect of the suit properties. He pointed out that one Sabbir had already sold the property Gat No.134 to the third person, but the same is not

mentioned. According to him, all the transfers are after the Memorandum of Understanding (MOU). According to him, the Pachora property was not the subject matter of the Suit before the Bombay High Court filed in the year 2004, which was then transferred to the City Civil Court, Bombay. According to him, by the impugned order of injunction, the Appellants are unnecessarily restrained from selling the suit properties, which are their individual properties.

13. On the contrary, learned Counsel for the Respondent nos.1 i.e. the Plaintiff Firm strongly opposed the submissions made on behalf of the Appellants in both these appeals. He also referred various documents in respect of earlier litigation regarding the suit properties. He pointed out that the learned City Civil Court, Bombay had, in fact, observed that all the suit properties at Pachora were belonging to the Plaintiff Firm and the said finding is not set aside or challenged till today. According to him, there are documents on record to show that the suit properties are the properties of the partnership Firm and therefore, the learned Trial Court has properly restrained the Appellants from creating third party rights over the same under the impugned order. As such, he prayed for rejection of both the Appeals.

14. It is significant to note that so many litigations were there

in past in respect of the suit properties along with the other properties at Mumbai and the parties have produced on the record voluminous record in respect of orders passed from time to time in the earlier litigations. However, the main controversy appears in the matter is that whether the suit properties are of Plaintiff Firm or they are individual properties of the Defendants. It is significant to note that copy of the balance sheet and the account of the Firm for the year 1973-74 clearly indicates that, there were withdrawals of amounts from the capital of Plaintiff no.2, deceased Samsuddin and Defendant nos. 2 and 3 for purchasing the suit properties at Pachora. Further it is apparent that, the aforesaid withdrawals were done from the capital accounts of the aforesaid persons under direct deduction from the bank account of the Firm through the cheques issued by the Firm. It is significant to note, that these withdrawals were directly credited to the personal account of the partners of the Firm, from where the consideration of the suit properties was paid. As such, *prima facie*, it appears that the funds of the Firm were used for purchasing the suit properties. However, it appears that, the MOU dated 23.03.1995 signed by the Defendant nos. 1, 2, 3, Plaintiff no. 2 and the wife of deceased Samsuddin indicates that the suit properties were purchased from the funds of the partnership Firm. Thus, *prima facie*, it appears that, the suit properties

were purchased from the funds of the Firm. Moreover, the Income Tax Return of the Firm for the Assessment Year 1989-90, also indicates that the Firm was having agricultural income of Rs.20,000/-. Thus, it is evident that the Firm was having certain agricultural lands at the relevant time.

15. Learned Counsel for the Appellants in both the Appeals heavily relied on the order of the learned Civil Judge, Junior Division, Pachora passed in R.C.S. No.50/2008 and the order confirming the said order passed by the learned District Judge, Jalgaon in Misc. Application No. 55/2010. On going through the said orders filed on the record, it is evident that the learned Civil Judge, Junior Division, Pachora had refused to grant temporary injunction by observing that land Gat No.82 and 136 were not belonging to the Firm. However, there is also a copy of the order passed by the learned City Civil Court, Bombay dated 24.07.2014 in the Suit No.6882/2004 filed by the Plaintiffs. On perusal of the said order, the aforesaid land along with the other suit properties are held to be properties of the Firm. It is significant to note, that both these orders are not the final orders, but it is in the form of interim arrangements. Moreover, the order of the learned City Civil Court, Bombay is recent one and has not been set aside yet. Besides these orders, there are voluminous documents on the record filed by either of

the parties, which are denied by each other. Therefore, a full-fledged trial is definitely needed to clarify each and every documents on the record. In the meantime, if the suit properties are alienated, or if, their nature is changed, then unnecessary complications will arise. There is certain material on the record, which *prima facie* indicates the nature of the suit properties as the properties the Plaintiff Firm. Thus, considering all these aspects, the impugned order passed by the learned Trial Court restraining Defendant nos.1 to 7 definitely appears proper at this juncture. The rights and liabilities of the parties are required to be decided at the conclusion of the trial, and therefore, no interference at this juncture, is required in the impugned order.

16. Accordingly, both the Appeals stand dismissed and accordingly, disposed of along with the pending Civil Application(s), if any.

(SANDIPKUMAR C. MORE, J.)

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