



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 4931 OF 2023**

**(Natthuji s/o Maroti Satpute Vs. Sau. Vanita Ramesh Somalkar & Ors.)**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's Orders.

Court's or Judge's orders.

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Dr. Ms R.S. Sirpurkar, Counsel for the petitioner.  
Mr. H.V. Thakur, Counsel for respondent nos. 1 and 2.

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**CORAM : ANIL L. PANSARE, J.**  
**JANUARY 9, 2025**

The petitioner – original defendant no.1, who is the father of respondent nos. 1 and 2 – original plaintiffs, is aggrieved by judgment and order dated 5/7/2023 passed by the District Judge – 1, Warora, in Miscellaneous Civil Appeal No. 3/2023, thereby allowing the appeal and setting aside the order of rejection of temporary injunction passed by the Joint Civil Judge Junior Division, Warora, in Regular Civil Suit No. 151/2022.

2] The petitioner and respondent nos. 1 and 2 shall be hereinafter referred to as 'father' and 'daughters' respectively. Respondent no.3 is a person with whom the father entered into agreement to sell the suit land. He has, however, withdrawn from the contract. He shall be hereinafter referred to as 'purchaser'.

3] The daughters filed suit against the father for partition and separate possession. Pending suit, they preferred an application (Exhibit 5) seeking injunction against their father to not create third party interest in the suit land. The daughters alleged that their father has

purchased the suit land out of the sale proceeds of land being Survey No. 32 sold by their grandfather to third party. The consideration amount was Rs.20,000/-. The sale-deed was executed on 8/2/1983.

4] According to the daughters, the father purchased the suit land on 9/5/1984 for Rs.10,000/-, which, according to them, is the amount received by their father out of the sale proceeds of land bearing Survey No. 32.

5] The father denied the claim stating that he was in employment for agricultural work and derived income, and out of the said income, had purchased the suit land and, thus, suit land is his self-acquired property.

6] The trial Court rejected the application on the count that there is no evidence to show that the suit land is the ancestral property or the property was purchased out of the sale proceeds of Survey No. 32, and further that there is no evidence that the father is all set to alienate the suit land in favour of the purchaser. The trial Court was further of the view that the daughters, having not challenged transfer of Survey No. 32, which allegedly was the ancestral property, the plea that there exists joint family property is not tenable.

7] This finding has been upset by the First Appellate Court on the count that where the plaintiffs put forth a claim against the property alleging it to be joint family property, there is a presumption of jointness, and the person claiming the property to be his/her self-acquired property has to prove the same.

8] This finding is contrary to the settled principles of law. A property cannot be presumed to be a

joint family property merely because of existence of joint family. The burden to prove the property to be joint family property lies on the person, who assert so. Thus, it was for the daughters to prove that the property acquired by their father was a joint family property.

9] The learned Counsel for the daughters submits that the daughters, having identified nucleus of funds by which the property has been acquired by their father, the property could be said to be a joint family property. In support, he has relied upon a judgment of the Hon'ble Supreme Court in the case of *Baikuntha Nath Paramanik (Dead) By His LRs And Heirs Vs. Sashi Bhusan Pramanik (Dead) By His LRs And Others* [(1973) 2 SCC 334], wherein the Court held that when a joint family is found to be in possession of nucleus sufficient to make the acquisition, then a presumption arises that the acquisitions standing in the names of the persons, who were in the management of family properties, are family acquisitions.

Thus, the necessary ingredients are that there has to be joint family, the family should be in possession of nucleus sufficient to acquire the properties and further the person, in whose name the property was acquired, was managing the said properties. I didn't come across anything in the plaint to show either of these ingredients, except a mere statement that the plaintiffs' father has acquired the suit land out of the sale proceeds of joint family property sold by their grandfather. The First Appellate Court has not given any consideration to the plea put forth by the father that he was in employment and generated funds to acquire the property.

Merely because two transactions, *viz.*, sale-deed of Survey No.32 and acquisition of the suit land by the father lie in two consequent years, by itself will not be sufficient to presume that the father has acquired the suit land out of the sale proceeds of earlier transaction, particularly in absence of any evidence that part of sale proceeds were given to father.

10] There was one more issue, which, though considered by the First Appellate Court, has not given due weightage to. The daughters have filed the suit for partition without making their brothers party defendants. This fact has been noted by the trial Court. The order of injunction if at all was to be passed, the brothers had right of hearing. The daughters have not taken steps to add them as party defendants. It appears that the daughters have now filed application to add them as party defendants. The fact, however, remains that order of injunction, which affects the rights of the brothers, was obtained behind their back. Such course is not permissible.

11] The First Appellate Court has, thus, committed serious error of law in holding that where a claim is made regarding jointness of family property, the presumption is so, and the person claiming property to be self-acquired has to prove it. The law is otherwise. It is for the daughters to prove that the suit land was joint family property. Mere statement that it has been acquired out of the sale proceeds of the earlier property is not sufficient to draw such presumption.

12] There is yet another aspect – whether Survey No.32 was a property self-acquired by the

grandfather has been not delve upon by both the Courts below, nor have taken into account the effect of Section 52 of the Transfer of Property act, 1882, which is provision sufficient to protect the interest of the daughters.

13] In the circumstances, I am of the considered view that the daughters failed to make out a *prima facie* case. The property appears to be self-acquired property of the father. However, this aspect will be decided during trial.

14] Put all together, in absence of any evidence of jointness of property and common nucleus, one cannot really say that the daughters have made out a *prima facie* case. The First Appellate Court, having failed to consider the settled position of law and the facts put forth before it, has rendered perverse finding.

15] The writ petition is accordingly allowed. The judgment and order dated 5/7/2023 passed by the District Judge – 1, Warora, in Miscellaneous Civil Appeal No. 3/2023, is quashed and set aside. Order dated 12/1/2023 passed by the Joint Civil Judge Junior Division, Warora, in Regular Civil Suit No. 151/2022, is restored.

16] The observations made hereinabove are for the purpose of testing legality of the order passed by the First Appellate Court. No finding has been rendered on merit. The trial Court shall not get influenced by any observation made in the order.

**(ANIL L. PANSARE, J.)**

Sumit