Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 1941 OF 2024
IN
SUIT NO. 80 OF 2025
[SUIT (L) NO. 19425 OF 2024]

Lajwanti Bhagwandas Bajaj and Ors. .. Applicants (Orig. Plaintiffs)

IN THE MATTER BETWEEN
Lajwanti Bhagwandas Bajaj and Ors. .. Plaintiffs
Versus
Pravin Viram Satra and Ors. .. Defendants

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- Mr. Ashish Kamat, Senior Advocate a/w. Dr. Pallavi Divekar, Sumantini Mohite, Mr. Rohan Kalande, Ms. Aishwarya Shetty, Advocates i/by M/s. Divekar & Co. for Applicants / Plaintiffs.
- Mr. Kshitish Shukla, Advocate for Defendant Nos.1 and 2.
- Mr. Simil Purohit, Senior Advocate a/w. Ms. Leena Shah, Advocate i/by M/s. Shah and Furia Associates for Respondent No.4.
- Mr. Nilesh Mishra, Advocate for Defendant No.5.
- Mr. Mayur Khandeparkar a/w. Mr. Pranesh Gada, Advocates for Respondent Nos.7 and 8.
- None appears for Defendant Nos.3 and 6.

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 08, 2026.

P.C.:

1. Heard Mr. Kamat, learned Senior Advocate for Applicants / Plaintiffs; Mr. Shukla, learned Advocate for Defendant Nos.1 and 2; Mr. Purohit, learned Senior Advocate for Defendant No.4; Mr. Mishra, learned Advocate for Defendant No.5 and Mr. Khandeparkar, learned Advocate for Respondent Nos.7 and 8. None appears for Defendant Nos.3 and 6. By consent of the parties, present Interim Application is taken up for hearing.

2. The present Interim Application is filed by Plaintiffs for temporary injunction and for restraining Defendants from entering / carrying out activities or interfering with Plaintiffs' 50% share in the Suit property. Parties are referred to as 'Plaintiffs' and 'Defendants' for the sake of brevity.

3. Briefly stated, on 14.08.1974 a Partnership Firm viz; Hindustan Construction Corporation (for short "**HCC OLD**") was formed which initially consisted of three (3) partners i.e. Gope R. Lala, Gomibai M. Motiramani and Kishan M. Motiramani. On 06.11.1976, two (2) new partners were added to the HCC OLD i.e. Thakurdas Jeramdas Bajaj and Bhagwandas Thakurdas Bajaj. On 01.04.1978, "Indenture of Change" was executed wherein one (1) new partner i.e. Deepak Bajaj (Defendant No.6) was added to HCC OLD. On 29.06.1982, by Deed of Indenture between M/s. Manoharlal and Company and HCC OLD, piece and parcel of land admeasuring 550 square yards (out of the total area of 5990 square yards) together with hereditaments and structures standing thereon being portion of Survey No.67, Hissa No.4 renumbered as CTS Nos. 358C, 358c/4 to 358C/9 at Andheri West, Mumbai – 400058 (for short "**the Suit property**") was transferred to HCC OLD.

3.1. On 18.02.1985, on demise of Thakurdas J. Bajaj i.e. Grandfather of Plaintiff, a Revised Partnership Deed was executed wherein his wife Devibai T. Bajaj was admitted as partner with effect from 14.02.1985. HCC OLD then consisted of six (6) partners i.e. three (3) from the Bajaj Family and three (3) from the Motiramani Family.

3.2. On 23.11.1988, MOU was executed between the six (6) partners of HCC OLD wherein it was decided that HCC OLD would stand dissolved on a later date and all assets and liabilities shall be divided equally between the existing partners except the Suit property which shall remain as the asset of all the six (6) partners of HCC OLD, also the six (6) partners would continue under the 1985 Revised Partnership Deed and develop the Suit property wherein Bhagwandas Bajaj and Kishan Motiramani (Defendant No.5) would carry on the development work of the Suit property. It was decided that the Suit property shall be maintained by all six (6) partners and the Bajaj Family would carry on the construction work under a new Partnership firm namely Hindustan Construction Corporation (for short "**HCC NEW**").

3.3. On 29.03.1990, new separate Partnership firm under the name of HCC NEW was formed which consisted of five (5) partners. On 04.11.1991, another MOU was executed between the six (6) partners of HCC OLD that save and except the development of Suit property, the Motiramani Family would not take up any construction work under the name and title of HCC OLD.

3.4. On 01.04.1996, Plaintiff No.4 vide Deed of Retirement retired from the HCC NEW and in her place Plaintiff No.1 was admitted as partner.

3.5. On 04.01.1999, Memorandum of Family Arrangement was executed between the Bajaj Family wherein it was decided that Deepak Bajaj (Defendant No.6) and Devibai Bajaj shall withdraw as partners from HCC NEW and Deepak Bajaj (Defendant No.6) shall relinquish his rights in the Suit property.

3.6. On 17.11.1999, Bhagwandas Bajaj expired leaving behind his legal heirs who acquired his share in the Suit property.

3.7. It is Plaintiffs' case that in 2005, Defendant No.1 representing Defendant No.5 and Defendant No.6 visited Plaintiffs' house to discuss sale of their share in the Suit property and aggressively asked Plaintiffs to sell their share of Rs.80 lakhs, however Plaintiffs refused to give their consent to the same.

3.8. It is Plaintiffs' case that on 20.05.2005, behind their back and without their knowledge a Deed of Assignment was executed between HCC NEW through two (2) of its 5 partners i.e. Kishan Motiramani (Defendant No.5) and Mohini Motiramani who assigned their 50% undivided right, title and interest to Pravin Satra (Defendant No.1).

3.9. It is Plaintiffs' case that in the year 2009, Defendant No.1 once again attempted to reach out to Plaintiff No.2 for joint meeting, however no deal was made. It is Plaintiffs' case that on 24.05.2018, Defendant No.2 i.e. son of Defendant No.1 sent an email wherein he acknowledged Plaintiff Nos.1 to 3's share in the Suit property and requested them to quote a price for giving up their share.

3.10. On 01.09.2018, HCC OLD was reconstituted with Defendant No.1 and Defendant Nos.5 and 6 continued to be its partners. It is Plaintiffs' case that on 08.09.2018, Aarsh Developer wherein Defendant No.4 is a partner issued public notices inviting objections / claims for acquiring the Suit property.

3.11. On 05.02.2019, HCC OLD was further reconstituted wherein Defendant No.5 retired and Defendant Nos.6, 7 and 8 were admitted as its partners. Further, on 30.03.2019, Defendant No.6 retired from HCC OLD as partner.

3.12. It is Plaintiffs' case that on 08.07.2019, Deed of Assignment was executed between Defendant Nos.7 and 8 as alleged partners of HCC NEW alongwith Pravin Satra (Defendant No.1), on one hand and M/s. Aarsh Developers through Defendant Nos.3 and 4 on the other hand. It is Plaintiffs' case that under this Deed Defendant Nos.1, 7 and 8 transferred their respective 50% share in the Suit property to Defendant Nos.3 and 4.

3.13. In and around November – December, 2023, Plaintiff No.2 while visiting Mumbai, noticed barricades on the Suit property. Pursuant to which Plaintiffs applied for property card wherein Mutation Entry passing the entire Suit property in favour of M/s. Aarsh Developer vide Assignment Deed dated 08.07.2019 was recorded.

3.14. Subsequently, Plaintiffs applied for certified copies of the Deed of Assignment which were received by them on 19.12.2023 from the Sub-Registrar's office, when they learnt of the two (2) Assignment Deeds wherein the Suit property was transferred to M/s. Aarsh Developers. It stated therein that 50% share of the Suit property was assigned to Defendant No.1 vide Agreement dated 05.06.2004. It is also recorded therein that Defendant Nos.7 and 8 are partners of HCC having 50% share in the Suit property. Pursuant to this, on 29.12.2023, Plaintiffs sent a legal notice to Defendant Nos.1 to 8, in furtherance to which from 17.01.2024 to 07.02.2024, Defendants replied to the said legal notice.

3.15. It is Plaintiffs' case that they sent multiple notices to the Municipal Authorities to stay construction work carried on by the Defendants on the entirety of the Suit property, however since no action was taken, Plaintiffs filed the present Suit and Interim Application to safeguard their 50% undivided right in the Suit property.

4. Mr. Kamat, learned Senior Advocate for Plaintiffs would submit that although the Suit property originally stood in the name of the partnership firm HCC OLD, the partners by mutual agreement *inter se*, unequivocally decided that the said property would be treated as the individual property of the six partners in their respective shares. He would submit that once such an agreement was arrived at between the partners, the Suit property ceased to be capable of being dealt with as property of the partnership firm. He would submit that the said understanding between the partners stands expressly confirmed by the MOUs executed on 23.11.1988 and 04.11.1991 which is not denied.

4.1. He would submit that the said MOUs clearly record that the Suit property was to be treated as property of the six individual partners and not as an asset of the firm. He would submit that the MOUs specifically include the heirs of the partners, thereby unequivocally demonstrating the intention of the partners that the property would devolve upon their respective successors upon their demise.

4.2. He would submit that the Family Arrangement dated 04.01.1999 further reinforces the aforesaid position. He would submit that under the said Family Arrangement, Defendant No.6 relinquished his share in Suit property in favour of the Plaintiffs. He would submit that such relinquishment clearly demonstrates that Defendant No.6

treated his share in the Suit property as his individual property and not as property of the partnership firm.

4.3. He would submit that the Deed of Assignment dated 20.05.2005 dealt only with the share of the Motiramani Family. He would submit that the said Deed expressly recognised and was made subject to the share of the Bajaj Family. He would submit that the fact that only Motiramani Family dealt with its share conclusively establishes that the partners treated their respective shares as individual property.

4.4. He would submit that the twin attempts made by Defendant No.1 to approach Plaintiffs requesting them to part with their share in the Suit property and email communication dated 24.05.2018 addressed by Defendant No.2 to Plaintiff No.2 expressly confirm Plaintiffs' undivided share in the Suit property. He would submit that the said email evidences that even at the time of purchase and thereafter Defendant No.1 acknowledged six (6) partners to be the co-owners of the property. He would submit that the conduct of Defendant No.1 in treating the shares separately further corroborates the Plaintiffs' case. He would submit that upon the demise of late Bhagwandas Bajaj, his share in the Suit property devolved upon his legal heirs in accordance with law.

4.5. He would submit that since Defendant No.6 relinquished his rights in the Suit property, the entire 50% share stood vested in late Bhagwandas Bajaj. He would submit that as the Suit property was the individual property of the partners, Plaintiffs' 50% undivided share could not have been transferred by the firm HCC OLD or by any alleged partner thereof without their consent. This according to him is the crux of the matter. He would submit that M/s. Aarsh Developers has not acquired any right, title or interest in Plaintiffs' undivided 50% share in the Suit property and therefore it is not entitled to undertake any construction on the entire Suit property without Plaintiffs' express consent. He would submit that M/s. Aarsh Developers claim right under the Deed of Assignment dated 08.07.2018, however under the said Deed, only 50% undivided share belonging to the Motiramani Family stands transferred by Defendant No.1 and remaining 50% share purportedly transferred by Defendant Nos.7 and 8 does not belong to them. He would submit that Defendant Nos.7 and 8 are strangers to the Bajaj Family and have no right or authority to transfer Bajaj Family's share.

4.6. He would submit that at the highest M/s. Aarsh Developers could claim entitlement to only the Motiramani Family's 50% share in the Suit property. He would submit that M/s. Aarsh Developers purchased the Suit property with full knowledge of individual shares of the partners and such knowledge is clearly evident from the Deed of

Assignment dated 20.05.2005 itself which expressly recognises the Bajaj Family's rights. Hence, he would submit that M/s. Aarsh Developers cannot claim the status of a *bona fide* purchaser and continue development to the exclusion of Plaintiffs' share / their subsisting 50% undivided right in the Suit property.

4.7. He would submit that if at all it is considered that the Suit property continued to be the property of HCC OLD, even then the transfer in favour of M/s. Aarsh Developers is illegal as the property was purportedly transferred contrary to the agreement between the partners and without the consent of all partners. He would submit that Clause 15 of the Partnership Deed did not permit sale of individual shares. He would submit that the remaining partners, including Defendant No.6 held the Suit property in a fiduciary capacity. He would submit that Plaintiffs as heirs of late Bhagwandas Bajaj are entitled to the profits accruing from his share in the Suit property. He would submit that the conduct of Defendants is wholly inequitable and *malafide*. He would submit that Defendants have acted in collusion to illegally and wrongfully appropriate Plaintiffs' admitted 50% right in the Suit property.

4.8. He would submit that repeated attempts were made to browbeat Plaintiffs into selling their share. He would submit that upon failure thereof, Defendants illegally transferred the Suit property under the guise of Deed of Assignment dated 08.07.2019. He would submit that M/s. Aarsh Developers illegally took possession of the entire Suit property and has commenced construction thereon.

4.9. He would submit that Plaintiffs noticed construction activity only in November – December 2023 and immediately raised objections. He would submit that the Suit was filed in 2024 when construction had just commenced, hence he would submit that in the case of co-owners even if there is delay, it cannot be a ground to deny interim relief, when Plaintiffs' admitted 50% undivided share/right in the Suit property is usurped dishonestly behind their back.

4.10. In support of his above submission, he has referred to and relied upon the decision of the Supreme Court in the case of ***M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and Others***[1] and more specifically on paragraph No.12 of the said decision.

4.11. He would submit that even if the Suit property is treated as the firm's property, remaining partners are bound to account for the same. He would submit that without settlement of accounts, the property of the firm cannot be dealt with to the detriment of the deceased partner's estate. He would submit that partners are in the nature of co-owners of the firm's property. In support of this

1 (1992) 2 SCC 598

submission, Mr. Kamat has referred to and relied upon the decision of the Supreme Court and various other High Courts in the case of ***(i) MMTC Ltd. Vs. M/s. Vedanta Ltd.***[2]***; (ii) Om Prakash and Others Vs. Chhaju Ram***[3] and ***(iii) Anant Shriram Sawant Major and Another Vs. Vishwanath Sakharam Naik (since deceased through Legal Heirs Satyawathi Vishwanath Naik and Others.***[4]

4.12. He would further submit that even after demise of a partner of a partnership firm the surviving partners remain accountable to his legal heirs. He would therefore urge the Court to allow the present Interim Application in the interest of justice.

5. Mr. Purohit, learned Senior Advocate for Defendant No.4 the principal contesting Defendant who is developing the entire Suit property has drawn my attention to the Affidavit-in-reply filed by Defendant No.4 dated 22.11.2024 appended at page No.30 of the Application and would submit that Defendant No.4 is one of the partner of M/s. Aarsh Developers and is the owner and also is in possession of the entire Suit property. He would submit that M/s. Aarsh Developers is a *bonafide* purchaser of Suit property under the registered Deed of Assignment dated 08.07.2019. He would submit that before acquiring the Suit property three (3) public notices dated 08.09.2018 were issued by his client inviting any claims with respect to

2 Civil Appeal No.1862 of 2014
3 1992 SCC OnLine P&H 501
4 2023 SCC OnLine Bom 2145

the Suit property, however no claims or objections were received from the Plaintiffs. He would submit that at the time of issuing Title Certificate, public notice dated 18.03.2021 was issued once again inviting objections, however no claim or objection was received from the Plaintiffs. He would submit that Title Search Report was obtained by M/s. Aarsh Developers, however no adverse entries were found therein.

5.1. He would submit that Plaintiffs' case is hit by limitation as it seeks to cancel Agreement dated 20.05.2005 and Assignment dated 08.07.2019. Hence, he would submit that on this very ground of limitation, Plaintiffs' case deserves to be dismissed. He would submit that Plaintiffs were well aware of the fact that Suit property was sold to M/s. Aarsh Developers in the year 2019 itself rather they had knowledge about sale of the Suit property to M/s. Aarsh Developer way back in 2005. He would submit that present Suit proceeding is therefore nothing but a complete afterthought on the part of Plaintiffs. He would submit that Defendant No.1 acquired 50% share in the Suit property in 2005 and has been in possession of the entire Suit property since then, and Plaintiffs did not raise any objection at all. He would submit that Plaintiffs are claiming right in the Suit property as heirs of Bhagwandas Bajaj who expired on 17.11.1999, however as per the Deed of Partnership it is clear that Bhagwandas Bajaj had 25% share in the said firm and not 50% as falsely claimed by Plaintiffs. He would therefore submit that claim of Plaintiffs is time barred.

5.2. He would submit that Bhagwandas Bajaj was a partner of the firm is an undisputed fact. Hence, with regard to this it is settled law that partners do not have right, interest or title in the assets of the firm as the properties belong to the firm and not to the individual partners. He would submit that since Bhagwandas Bajaj's demise on 17.11.1999, Plaintiffs did not seek for any share until when construction began on the Suit property.

5.3. He would submit that Plaintiffs did not implead HCC OLD or M/s. Aarsh Developers as parties to the present Suit even when their substantive claim lies against the Suit property held by these two entities. He would submit that the Suit filed by Plaintiffs is on purpose over valued when the true market value of the Suit property is not more than 10 crore, hence on this ground the Suit plaint deserves to be returned. He would submit that the original partnership Deeds were never provided to this Defendant for inspection which further weakens Plaintiffs' case.

5.4. He would submit that Plaintiffs failed to join the firm within 3 months from the death of Bhagwandas and after 25 years are now claiming their right in the Suit property. He would submit that the Suit property belonged to the partnership firm and not individually to Bhagwandas Bajaj. He would therefore submit that Plaintiffs have failed to make out a *prima facie* case for injunction and hence urge the Court to dismiss the Interim Application.

5.5. He would submit that with regard to understanding between Plaintiffs and Defendant Nos.5 and 6 there is no knowledge of any written understanding, hence he would submit that there is no conclusive or binding contract and therefore any right claimed under any understanding holds no legal validity in so far as this answering Defendant is concerned.

5.6. He would submit that Plaintiffs do not have any right over the Suit property as the same belonged to HCC firm and Defendant No.1 who thereafter has assigned the same to M/s. Aarsh Developers for valuable consideration. Hence, he would submit that there is no fraud or misrepresentation played upon the Plaintiffs.

5.7. In support of his above submissions he has referred to and relied upon the decisions of the Supreme Court and this Court in the case of ***Addanki Narayanappa and Another Vs. Bhaskara Krishnappa (dead) and thereafter his heirs and Others***[5] and ***Yashvant Chunilal Mody Vs. Yusuf Karmali Kerwala and Others***[6] **.** In view of the above submissions he would submit that the Interim Application be dismissed in the interest of justice and equity.

5 AIR 1966 SCC 1300
6 2014(3) Mh.L.J. 111

6. Mr. Shukla, learned Advocate for Defendant Nos.1 and 2 would submit that the entire case of Plaintiffs is wholly misconceived inasmuch as the Suit property at all material times continued to remain as asset of the partnership firm and it never ceased to retain its character as partnership firm's property. He would submit that no partner in the firm had any defined, exclusive or transferable share in the immovable property of the firm and therefore the Plaintiffs, being merely legal heirs of a deceased partner, cannot claim any independent proprietary right, title or interest in the Suit property. He would submit that rights of a partner are confined only to his share in the profits and upon dissolution to the extent of the value of his share after settlement of accounts and therefore Plaintiffs cannot maintain the present Suit claim on the footing of co-ownership.

6.1. He would submit that under the Partnership Deeds executed from time to time, it was specifically agreed between partners that upon demise of any partner, legal heirs of deceased partner desirous of joining the partnership firm were required to intimate their willingness within the prescribed period. He would submit that admittedly after demise of late Bhagwandas Bajaj, none of the Plaintiffs exercised the option of seeking admission into the partnership firm and therefore Plaintiffs never acquired any rights in the affairs or assets of the partnership firm. He would submit that the surviving partner namely Defendant No.1 was therefore fully entitled to continue the partnership firm's business and thereafter reconstitute the firm from time to time in accordance with law and deal with the properties of the partnership firm.

6.2. He would submit that the Memorandam of Understanding relied upon by Plaintiffs do not create or confer any proprietary rights in the Suit property in favour of individual partners of the firm. He would submit that in the absence of any registered conveyance or Partition Deed, the Suit property never vested in the partners in their individual capacity. He would submit that the Deed of Assignment dated 20.05.2005 executed in favour of Defendant No.1 and the subsequent Deed of Assignment dated 08.07.2019 executed in favour of M/s. Aarsh Developers are lawful and valid transactions executed by persons having lawful authority and title in respect of the Suit property. He would submit that prior thereto public notices were issued inviting objections, however no objections were ever received from Plaintiffs.

6.3. He would submit that Plaintiffs' challenge to the transactions of the years 2005 and 2019 is barred by limitation and gross delay and laches. He would submit that despite being aware of the status of the Suit property and development activities being carried out thereon, Plaintiffs remained completely silent for more than two decades and have now approached this Court only after substantial development activities have commenced. He would submit that the plea that Plaintiffs acquired knowledge only in the year 2023 is false, concocted and raised merely to overcome the bar of limitation.

6.4. He would submit that the email dated 24.05.2018 relied upon by Plaintiffs has been misconstrued and at the highest it reflected only exploratory settlement discussions undertaken without prejudice. He would submit that the same cannot be treated as any acknowledgment of title or admission of proprietary rights of Plaintiffs in the Suit property. He would submit that Plaintiffs have failed to establish any *prima facie* case warranting grant of interim relief and would submit that enormous investments and third-party interests are involved in the development of the Suit property. He would therefore submit that the balance of convenience is entirely against the Plaintiffs and consequently the Interim Application deserves to be dismissed with costs.

7. Mr. Mishra, learned Advocate for Defendant No.5 would submit that Defendant No.5 has been unreasonably impleaded in the present proceedings as no substantive relief can now be claimed against him inasmuch as Defendant No.5 had already retired from the partnership firm much prior to the institution of the present Suit. He would submit that Defendant No.5 acted strictly in accordance with the arrangement prevailing between the partners from time to time and has no role whatsoever in the alleged development presently being carried out on the Suit property. He would submit that Defendant No.5 neither retains any right, title or interest in the Suit property nor is presently concerned with the affairs of the partnership firm.

7.1. He would submit that the Suit property at all material times constituted as asset of the Partnership firm and no individual partner had any exclusive or identifiable ownership right therein. He would submit that the Plaintiffs, being merely legal heirs of a deceased partner, cannot claim any independent proprietary rights in respect of any specific immovable property of the firm. He would submit that under settled position of law, rights of partners are confined only to the share in profits and upon dissolution to the share remaining after settlement of accounts and therefore Plaintiffs' claim of alleged 50% ownership in the Suit property is wholly untenable.

7.2. He would further submit that the Memorandum of Understanding and family arrangements relied upon by Plaintiffs do not constitute any legal transfer, conveyance or Partition of the Suit property. He would submit that no registered document evidencing transfer of any defined share in favour of Plaintiffs or their predecessor has been placed on record. He would submit that the Deed of Assignment dated 20.05.2005 and subsequent transactions were carried out openly and lawfully and Plaintiffs never raised any objections thereto for several years. He would therefore submit that the present proceedings are clearly barred by delay, laches and limitation.

7.3. He would submit that Defendant No.5 has acted bonafidely and in accordance with the partnership arrangements existing between the parties. He would submit that after retirement of Defendant No.5 from the partnership firm, subsequent reconstitution of the firm and transactions entered into thereafter were matters entirely within the domain of the continuing partners and Defendant No.5 cannot now be made liable for disputes *inter se* between Plaintiffs and the other Defendants. He would submit that no *prima facie* case is made out against Defendant No.5 warranting grant of any relief against him.

7.4. He would therefore submit that Plaintiffs have failed to establish any subsisting right against Defendant No.5 and the Interim Application insofar as Defendant No.5 is concerned deserves to be dismissed. He would further submit that the balance of convenience is not in favour of Plaintiffs and no irreparable loss or prejudice would be caused to them in absence of interim protection. He would therefore urge this Court to dismiss the Interim Application in the interest of justice.

8. Mr. Khandeparkar, learned Advocate for Defendant Nos.7 and 8 would draw my attention to the Affidavit-in-Reply dated

23.11.2024 filed by Defendant No.7 on behalf of Defendant Nos.7 and 8 appended at page No.218 of the Interim Application. He would submit that Plaintiffs being legal heirs of one of the partners of the firm cannot maintain a claim in the Suit property as under the Partnership Act the partners are entitled to profits of the firm only upon dissolution and are thereafter entitled to the sale proceeds of the firm as agreed as per the Partnership Deed.

8.1. He would submit that the Suit is liable to be dismissed on the ground of limitation as relief claimed by Plaintiffs is clearly time barred. He would submit that Plaintiffs have challenged two Deeds of Assignment dated 20.05.2005 and 08.07.2019 after a delay of several years. He would submit that these submissions in Plaint itself show that Plaintiffs were aware about rights being created in the Suit property since the year 2005 onwards despite which they did not choose to take any steps. He would submit that though Plaintiffs claim 50% share in the Suit property, however their predecessor-in-title infact had only 25% share in the Suit property. He would therefore submit that Plaintiffs are not entitled to their claim of 50% share in the Suit property.

8.2. He would submit that Suit is not maintainable before this Court on the ground of jurisdiction it is over-valued solely because the value of the Suit property is not more than 10 crore. He would submit that this is clearly evident from the valuation of the property stated in the Deed of Assignment dated 08.07.2019. He would submit that Plaintiffs have however deliberately with a *malafide* intention overvalued the Suit property to sustain jurisdiction of this Court. He would submit that on this very ground the Court should entertain the present Suit and it deserves to be dismissed with costs.

8.3. He would submit that even though the old partnership firm was reconstituted for the third time in the year 1985, Clause 18 of the Partnership Deeds dated 01.04.1978 and 18.02.1985 record that in case of demise of any of the partner during continuation of the Partnership Deed, any one or more of his/her children i.e. the legal heirs of such demised partner shall be eligible to become partners, however on intimation to be given in writing within three (3) months of the date of demise.

8.4. He would submit that the old firm was once again reconstituted vide Partnership Deed dated 20.03.1996 wherein in Clause 10 it was agreed between the partners that the firm shall not dissolve in event of demise of any of the partner and the business shall be continued by the continuing partners. He would draw my attention to Clause 17 of the said Partnership Deed and contend that the Partnership Deed dated 20.03.1996 specifically stated that all other clauses of the previous Partnership Deed dated 18.02.1985 shall be applicable to it. He would therefore submit that no where it is stated that the firm property shall belong to the legal heirs of the Partner of the firm on his/her demise.

8.5. He would submit that on demise of Bhagwandas Thakurdas Bajaj on 17.11.1999 and Devibai Thakurdas Bajaj on 09.08.2004 none of their legal heirs intimated in writing about their intention to become partners of the Partnership Firm within a period of three months as stipulated in the Partnership Deeds from time to time. He would therefore submit that the remaining partners continued with the business of the said firm and thereafter those partners agreed to admit Bhavya Satra i.e. Defendant No.7 as partner and thereby partnership was reconstituted under Partnership Deed dated 01.09.2018 pursuant to which two partners from the Motiramani family i.e. Kishin Motumal Motiramani and Mohini Kishin Motiramani decided to retire from the said firm. He would submit that in their place Bhavik Satra i.e. Defendant No.7 was admitted as partner of the said firm. He would submit that due to the said change, Partnership was once again reconstituted under Indenture of Admission-cum-Retirement Deed dated 05.02.2019.

8.6. He would submit that pursuant to the change only three (3) partners remained in the said firm. He would submit that Deepak Thakurdas Bajaj i.e. Defendant No.6 retired vide Retirement Deed dated 30.03.2019 and accordingly Defendant Nos.7 and 8 became equal partners of the said firm pursuant thereto.

8.7. He would submit that the old Partnership firm already had 50% share in the Suit property and the other 50% belonged to Defendant No.1 under the Deed of Assignment dated 20.05.2005. He would submit that by Deed of Assignment dated 08.07.2019 Defendant Nos.7 and 8 being present partners of the said Partnership firm assigned and transferred 50% right in the Suit property in favour of M/s. Aarsh Developers and Defendant No.1 equally transferred his 50% right. He would submit that the Suit property was sold for a consideration of Rs. 6.50 crore. He would submit that possession of the Suit property was handed over to M/s. Aarsh Developers on 08.07.2019 and hence the Suit property now absolutely belongs to M/s. Aarsh Developers. He would submit that since 2019 the possession of the Suit property has vested with M/s. Aarsh Developers. He would submit that Plaintiff Nos.1 and 3 are residing opposite to the Suit property and after the demise of Bhagwandas Bajaj, none of the Plaintiffs claimed any right in the Suit property.

8.8. He would submit that only when Plaintiffs noticed construction activity that is when they claimed right in the Suit property even when they are not entitled to the same. He would submit that Plaintiffs addressed letter dated 29.12.2023 and the same was replied by Defendant Nos.7 and 8 and thereafter Plaintiffs made complaints to MCGM. He would submit that when Plaintiffs realised that they would not succeed in their actions, that is when they decided to file the present Suit. He would submit that Plaintiffs have not made out any case for interim relief and hence the Interim Application be dismissed with costs.

9. I have permitted Mr. Kamat to make his Rejoinder submissions at his request. He has drawn my attention to Affidavits-in-Rejoinder dated 07.02.2025 filed by Plaintiffs and would submit that M/s. Aarsh Developers are neither *bona fide* purchasers nor present owners of the Suit property. He would submit that Plaintiffs had no knowledge whatsoever of any alleged transfers, assignments or development activities in respect of the Suit property prior to October – November 2023. He would submit that prior to October 2023 there were no hoardings or boards displayed on the Suit property. He would submit that even according to Defendants, the alleged demolition related only to a structure behind the Suit property and not of the building standing on Suit property. He would submit that the Plaintiffs' residential premise at Jeevan Sudha Building situated on the main road opposite the Suit property is on the rear side of the building with obstruction caused by a flyover and there is no direct visibility of the Suit property from there.

9.1. He would submit that Plaintiff Nos.1 and 3 had temporarily shifted from their residence in Jeevan Sudha Building in or about August 2023 due to redevelopment and were residing in Panvel, and thereafter in or about September 2023 they shifted to Andheri under a Leave and License Agreement. He would submit that in these circumstances the Plaintiffs were not in a position to monitor any activity at the Suit property. He would submit that Plaintiff No.3, who suffers from hearing impairment, came to notice construction activity only in October 2023 while visiting a nearby doctor. He would submit that upon making inquiries thereafter, Plaintiffs learnt of the alleged illegal transfers and construction and therefore the cause of action arose only at that point of time.

9.2. He would submit that Plaintiffs have consistently maintained that the Suit property was always treated as the individual property of the partners of the erstwhile firm and was never an asset of the Partnership Firm. He would submit that the various Partnership Deeds and Memorandum of Understanding from 1970 onwards, including those of the years 1976, 1978, 1985, 1988, 1991, 1996 and 1999 clearly demonstrate and reflect this position namely that the Suit property was retained by the partners in their individual capacity. He would submit that Defendant No.5 transferred his 25% share to Late Mr. Bhagwandas Bajaj, thereby Mr. Bajaj acquired 50% share in the Suit property and therefore the Plaintiffs, as his legal heirs are entitled to assert their rights in respect thereof.

9.3. He would submit that the alleged Partnership Deeds of 2018 and 2019 as well as the Deeds of Assignment of 2005 and 2019 relied upon by Defendants, are fabricated, sham and created to defeat the Plaintiffs' lawful rights. He would submit that Plaintiffs have specifically denied the existence and validity of these documents and have pointed out material inconsistencies, including the continued reflection of Defendant No.5 as a partner despite alleged prior transfer of his share. He would submit that even the condition of older documents including torn and missing pages has been explained by Plaintiffs and therefore he would submit that no valid title could have been created on the basis of such documents.

9.4. He would submit that Defendants' contention regarding issuance of public notices in 2018 or 2021 is wholly misconceived as Plaintiffs had no knowledge of any such public notices. He would submit that Plaintiffs were not residing at their original premises during the relevant period and had no occasion to come across such notices and mere publication of a notice does not constitute actual or constructive notice in the facts of the present case and defeat the Plaintiff's right in the Suit property. He would submit that in any event Defendants were fully aware of Plaintiffs' subsisting right in the Suit property, as reflected in prior correspondence including the email dated 24.05.2018 and therefore Defendant No.4 cannot claim to be a *bonafide* purchaser without notice and any transfer in favour of Defendant No.4 or M/s. Aarsh Developers is subject to Plaintiffs' rights.

9.5. He would submit that Defendant Nos.7 and 8 are closely related to Defendant Nos.1 and 2 and have acted in connivance with them through which alleged transfers and development is carried out behind the back of Plaintiffs. He would submit that the plea of hardship or creation of third-party rights cannot defeat the Plaintiffs' ownership right and any such right having been created is solely at the risk of Defendants and subject to the outcome of the present proceedings. He would submit that Plaintiffs have approached this Court solely to protect their lawful rights.

9.6. He would submit that the Plaintiffs have dealt with each and every paragraph of the replies filed by Defendant Nos.4, 7 and 8 in a detailed and categorical manner and no material contradiction or inconsistency survives in Plaintiffs' case. He would submit that Plaintiffs have established a strong *prima facie* case and balance of convenience is in favour of Plaintiffs. He would submit that irreparable injury will be caused if Defendants are permitted to deal with or create third-party rights in respect of the Suit property. He would submit that Affidavits-in-Rejoinder therefore clearly rebut the defence of Defendants and entitle the Plaintiffs to interim relief as prayed for.

10. I have heard Mr. Kamat, learned Senior Advocate for Applicants / Plaintiff; Mr. Shukla, learned Advocate for Defendant Nos.1 and 2; Mr. Purohit, learned Senior Advocate for Defendant No.4; Mr. Mishra, learned Advocate for Defendant No.5 and Mr. Khandeparkar, learned Advocate for Respondent Nos.7 and 8 and with their able assistance perused the record of the case. Submissions made by learned Senior Advocates and Advocates at the bar have received due consideration of the Court.

11. At this interlocutory stage, it is well settled that the Court is not required to finally adjudicate upon disputed questions of title but the question required to be ascertained is whether Plaintiffs have made out a *prima facie* case, whether the balance of convenience lies in their favour and whether irreparable injury would be caused in the absence of interim protection?

12. The foundation of Plaintiffs' case rests upon the status and character of the Suit property and *inter se* arrangement between the partners of the erstwhile firm and/or their predecessors-in-title based upon various Partnership Deeds and MOUs executed in 1976, 1978, 1985, 1988, 1991, 1996 and 1999. It is not in dispute that the Suit property was originally acquired in the name of the partnership firm. However, the Memorandum of Understanding dated 23.11.1988 assumes central importance. Clause 3 thereof which has been heavily relied upon by both sides is reproduced below for immediate reference. It reads thus:-

> *"**3.** All the assets and liabilities of the partnership firm shall be divided among the partners in their proportionate share except the plot at Andheri and office premises at Bandra, which are acquired by the Firm. The said Plot and Office shall remain the asset of all the six partners of the firm."*

13. From the above, it is seen that the language of the clause is unambiguous inasmuch as it carves out a specific exception from the general distribution of assets of the firm and consciously retains the Suit property as joint asset of all the six partners of the firm.

14. Equally relevant is Clause 1 of the Memorandum of Understanding dated 04.11.1991 which records that the partnership shall be dissolved at a later date but all six partners shall continue under the same Partnership Arrangement for the limited purpose of developing the plot at Andheri and holding the office premises at Bandra. A conjoint reading of these two clauses *prima facie* indicate that while the business of the firm was to be wound down or restructured in future, but in so far as the above 2 immovable properties in question are concerned, they were intended to be retained jointly by the six partners and carried forward either by them or their successors-in-title / legal heirs. This arrangement therefore departs from the usual practice of property held as a partnership property and suggests a conscious intention to treat the Suit property differently. Atleast at this *prima facie* stage, I am inclined to accept this position for the sake of deciding interim relief.

15. The contention of the contesting Defendants that the Suit property continued to remain a partnership asset in which no partner had any defined share therefore cannot be accepted at this *prima facie* stage without any cogent evidence placed on record to the contrary. The expression used in Clause 3 of the Memorandum of Understanding dated 23.11.1988 that the property “shall remain the asset of all the six partners”, when read in the context of dissolution indicates that the beneficial interest in the Suit property was intended to vest in all the partners collectively and not in the firm as a fluctuating commercial property. This *prima facie* lends support to Plaintiffs’ contention that all the six partners had identifiable interests in the Suit property and therefore without consent of all partners, some of the partners could not have dealt with the said asset to the exclusion of the others.

16. It is seen from the record that this inference is further strengthened by subsequent conduct of the parties. The Deed of Assignment dated 20.05.2005, on the face of it deals with the transfer of interest pertaining to one branch of the partners only. Significantly, the remaining interest is not dealt with at that stage. Such conduct *prima facie* indicates that the parties themselves treated their respective shares in the property as distinct and capable of separate dealing. This is inconsistent with the strict proposal canvassed by

Defendants that no individual partner had any assignable interest. Hence case pleaded by Defendant No.1 is not acceptable at this *prima facie* stage.

17. Further the family arrangement and retirement of Defendant No.6 also assumes significance. The relevant Clause records that Defendant No.6 "has agreed to relinquish his right, share and/or claim" in the concerned properties. The use of the expression "share" and "relinquish" is not and cannot be without consequence. It *prima facie* implies the existence of a definite and identifiable interest capable of being surrendered / transferred. It is pertinent to note that such language would be wholly incongruous if the partner had no determinable interest in the Suit property. These circumstances lend further support to Plaintiffs' case that the Suit property was treated *inter se* as property in which the partners had defined shares.

18. It is seen that Defendants have placed reliance upon clauses in the Partnership Deed which stipulate that upon the death of a partner his/her heirs would be required to intimate their intention to join the firm within a stipulated period, failing which the business would continue with the remaining partners and the remaining partners would be free to carry on business of the assets of the firm to the exclusion of the other partners / their legal heirs. However, I am of the view that such clauses govern the continuity of the partnership and the constitution of the firm. These clauses do not at this stage conclusively determine the devolution of rights in the Suit property which was specifically carved out under the Memorandum of Understanding dated 23.11.1988. Hence, the point of determination i.e. whether such failure would result in extinguishment of the proprietary rights is a matter which would require detailed examination at trial on evidence and evidence-in-rebuttal.

19. Insofar as the Deeds of Assignment dated 20.05.2005 and 08.07.2019 are concerned, Plaintiffs have raised serious challenge to their validity. *Prima facie* if Plaintiffs' case regarding co-ownership or defined shares is accepted then in that case the transfer effected by certain Defendants of the entire Suit property without Plaintiffs' consent could not have conveyed the entire interest in the Suit property. At the highest, they could have dealt with their own 50% undivided share. The authority of Defendant Nos.7 and 8 to transfer the alleged 50% undivided share of Plaintiffs' claim is a serious triable issue which cannot be *prima facie* determined at this stage in favour of the Defendants.

20. It is further seen that the email communication dated 24.05.2018 relied upon by Plaintiffs carries a significant lot of importance and more specifically so at this *prima facie* stage. The said communication *prima facie* acknowledges Plaintiffs' share and seeks to negotiate its purchase. The argument that Defendants are attempting exploratory settlement without prejudice to their rights itself gives away the case of the Defendants. It clearly establishes a *prima facie* case in favour of the Plaintiffs. Such acknowledgment itself at this stage militates against the Defendants' contention that Plaintiffs have no subsisting right or that their claim is wholly untenable in law. The contention argued by Defendant No.1 that the above email related to exploratory settlement discussion is in itself *prima facie* enough to allow interim relief. It is only when all attempts of Defendant Nos.1 and 2 had failed to buy out the Plaintiffs, they indulged in the 2019 Deed of Assignment. Hence Defendant Nos.1 and 2's defence is unacceptable at this stage on the face of record.

21. With regard to the contention of limitation raised by Defendants, it is pertinent to note that it cannot be determined at this interlocutory stage in view of the assertions and denials by the parties. It is necessary to consider that the Plaintiffs asserted that they became aware of the said transactions only in the year 2023 upon noticing construction activity in the Suit property. Hence, in that view of the matter, whether such a plea is sustainable would clearly be a mixed question of facts and law and therefore matter of evidence. Limitation, being a mixed question of law and fact in such circumstances cannot be conclusively adjudicated at the interim stage. Further, in cases involving alleged co-ownership mere delay in absence of clear ouster does not *ipso facto* defeat a claim for interim protection. Curiously the issue of limitation is the only issue pleaded by all Defendants.

22. It is not in dispute that construction activity has commenced on the Suit property. If such activity is permitted to continue unchecked and third-party rights are created, Plaintiffs' share would be prejudiced, compromised and lost forever and the final adjudication may be rendered nugatory. Hence entire balance of convenience in such facts and circumstances is in favour of the Plaintiffs

23. It is pertinent to note that the conduct of Defendant Nos.1 and 2 as borne out from the material placed on record, *prima facie* clearly demonstrates acknowledgment of Plaintiffs' subsisting right and interest in the Suit property. It is seen that Plaintiffs have specifically pleaded that Defendant No.1 alongwith Defendant No.2 had personally visited Plaintiffs' residence for the purpose of discussing purchase of Plaintiffs' share in the Suit property. The said averments are not required to be conclusively adjudicated at this interlocutory stage, however the same assume significance when read in conjunction with the email dated 24.05.2018 admittedly addressed by Defendant No.2 to Plaintiffs which is not denied. It is further seen that by the said email, Defendant No.2 has expressly acknowledged Plaintiffs' share in the Suit property and called upon Plaintiffs to state the consideration at which they would be willing to part with their rights. Defendant

No.1 has candidly agreed that the said email was addressed without prejudice to the rights and contentions of Defendant Nos. 1 and 2. *Prima facie* it was a clear offer made to negotiate and buy out Plaintiffs' share in the Suit property. Hence, in that view of the matter *prima facie*, such communication constitutes a clear acknowledgment of Plaintiffs' assertion of rights in the Suit property and substantially weakens the stand now canvassed by Defendants that Plaintiffs had no subsisting right, title or interest whatsoever in the Suit property.

24. I am of the considered opinion that once Defendant Nos.1 and 2 themselves entered into negotiations with Plaintiffs for acquisition of Plaintiffs' share in the Suit property, it does not then give them a right to thereafter contend that Plaintiffs' claim is non-existent as argued before me which is wholly untenable. The very fact that Defendant Nos.1 and 2 approached Plaintiffs and sought to negotiate for purchase of their share *prima facie* indicates that Defendant Nos.1 and 2 were fully conscious of and had recognized Plaintiffs' proprietary interest in the Suit property. Hence, such conduct cannot be lightly brushed aside at this stage.

25. Despite such acknowledgment and negotiations, the record *prima facie* indicates that Defendant Nos.1 and 2 thereafter proceeded to execute and/or facilitate the impugned transactions in respect of the Suit property without disclosure to Plaintiffs and without obtaining their concurrence or consent. *Prima facie*, the sequence of events placed on record indicates that the transactions culminating into the Deed of Assignment dated 08.07.2019 was undertaken behind the back of Plaintiffs even when Defendant Nos.1 and 2 were fully aware of Plaintiffs' undivided 50% share in the Suit property. This conduct of Defendant Nos.1 and 2 therefore raises serious questions regarding the bona fides of the transaction i.e. Deed of Assignment of 2019 in question and necessitates detailed examination at trial.

26. It is trite law that no person can convey title than what he himself possesses. Therefore, even assuming for the sake of argument that Defendant Nos.1, 2, 7 and 8 had some transferable interest in the Suit property, at the highest they could have lawfully dealt with only that share, right, title and interest, if any, in the Suit property.

27. In this regard attention is invited to the decision of the Goa Bench of this Court in the case of ***Anant Shriram Sawant major and Another Vs. Vishwanath Sakharam Naik (since deceased) through Lrs. Satyawathi Vishwanath Naik and Others***[7] wherein the Court in paragraph No.67 held that if a co-owner has an interest in the whole property then the other co-owners cannot disturb the arrangement without the consent of others except by filing a Suit for partition. Relevant paragraph No.67 of the said decision is reproduced below for immediate reference:-

7 2023 SCC OnLine Bom 2145

> *"**67.** Tarsem Singh (deceased) (supra) relied upon by Mr. Lawande refers to decision of Full Bench of the Punjab and Haryana High Court in Bhartu v. Ram Sarup [1981 PLJ 204] and of the Division Bench in Sant Ram Nagina Ram v. Daya Ram Nagina Ram [AIR 1961 Punj 528]. Propositions, in these decisions, have been transcribed by the learned Single Judge in Tarsem Singh (deceased) (supra). The proposition transcribed therein assist the case of the Plaintiffs and not the Defendants. The decisions of the Full Bench and the Division Bench referred to in Tarsem Singh (deceased) (supra) hold that a co-owner has an interest in the whole property and also in every parcel of it. Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession. Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar right of other co-owners. Further, it is only where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owner, the other co-owners cannot disturb the arrangement without the consent of others, except by filing a suit for partition."*

28. Further, attention in this regard is also invited to the decision of the Punjab and Haryana High Court in the case of ***Om Prakash and Others Vs. Chhaju Ram***[8] and specifically to paragraph Nos.5 and 7 of the said decision which read as under:-

> *"**5.** The parties are at variance as far as the question of partition of land in suit amongst all the co-owners including the plaintiff is concerned. Thus the partition deed, which admittedly, is not a registered document, is yet to be proved on the record. Entries in the latest jamabandi for the year 1986-1987 produced before this Court by the learned counsel for the petitioners do not in any manner indicate that any private partition has taken place between the co-owners. Rather, Ram Saran Dass is shown to be in exclusive possession of the entire suit land. Copy of khasra girdawari for kharif 1990-1991 does indicate that partition of land measuring 7 Marias comprised in khasra No. 28/20/3 (0 — 7), came to the share of Jiwan Dass (defendant-vendee) in partition proceedings. However, in the absence of other legal and cogent material on the record at this stage, it cannot be reasonably inferred that any partition has taken place with regard to the entire suit land, between all the co-owners or that the joint owners became exclusive owners in possession of specific portions of suit land. Admittedly, the defendants want to construct/give finishing touches to the partially constructed shops on the front portion of the suit land. The entire land in suit being chahi, as such the construction would obviously change the user of the land in suit. Such an eventuality would also prejudice the rights of the plaintiff and other co-sharers in the suit land. Mere fact that defendants are*

8 1992 SCC OnLine P&H 501

ready and willing to give an undertaking to demolish such construction and taking away malba(if plaintiff succeeds), would not be sufficient to compensate loss or damage caused to the plaintiff. Rather, balance of convenience at this stage would be to restrain the defendants from raising any new/further construction over the land in dispute during the pendency of the suit. Thus the balance of convenience is also in favour of the plaintiff who has approached this Court for the redressal of his grievances at the earliest and has also been able to make out a prima facie case for the grant of temporary injunction. I find support in my view from the Full Bench Authority of this Court inBhartu v.Ram Sarup [1981 P.L.J. 204.] . In the latter authority reliance was placed on the Division Bench Authority of this Court in Sant Ram Nagina Ram v. Daya Ram Nagina Ram[A.I.R. 1961 Punjab 528.] , wherein inter se rights and liabilities of the co-owners were settled as follows:—

(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner is in the eye of law, possession of all, even if all but one are actually out of possession.

(3) A mere occupation of a larger portion, or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the coowner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.

In the abovesaid Full. Bench authority in Bhartu's case, it was further observed that when a co-sharer is in possession exclusively of some portion of the joint holding, he is in possession thereof as a cosharer and is entitled to continue in its possession if it is not more than his share till the joint holding is partitioned. It is also undisputed that a vendor cannot sell any property with better rights than he himself has. Consequently, when a co-sharer sells his share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession, what he transfers is his right as co-sharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all the co-sharers.

6. xxxxxxx

7. *Thus it is quite obvious that a co-sharer who is in exclusive possession cannot be permitted to raise construction on the land in his possession, as every other co-sharer is also a joint owner of*

> *every inch of the entire joint holding till the same is regularly partitioned by meets and bounds. I find support on this point from the Single Bench authority of this court in Mst. Parsini alias Mano v. Mohan Singh [1982 P.L.J. 280.] , wherein it was held that a co-sharer in exclusive possession of a part of joint land cannot raise construction on the land as every co-sharer is a joint owner of every inch of the whole land. To the same effect is the latest Single Bench authority of this Court in case Daulat Ram v. Dalip Singh [1989 (1) R.L.R. 523.]"*

29. In view of the above observations and findings, Defendants could not have even otherwise purported to transfer, assign or otherwise encumber the share of Plaintiffs without Plaintiffs' authority, consent or participation in the transaction. The question as to whether Defendant Nos.7 and 8 had any lawful authority to represent or transfer Plaintiffs' share itself constitutes a substantial and serious triable issue which cannot be conclusively determined at this interlocutory stage.

30. The material placed on record *prima facie* indicates that the Deed of Assignment dated 20.05.2005 itself proceeded on the basis that distinct and separate interests existed in favour of different branches of the family. Significantly, even under the said transaction the alleged transfer pertained only to one branch and not to the entirety of the Suit property. *Prima facie*, such material clearly supports Plaintiffs' contention that the parties themselves treated the Suit property as consisting of separate and identifiable interests rather than as an undivided fluctuating partnership asset incapable of separate dealing.

31. Insofar as the defence sought to be raised by Defendant No.4 and M/s. Aarsh Developers regarding their status as bonafide purchasers is concerned the same also does not *prima facie* inspire any confidence at this stage. These Defendants have merely relied upon issuance of public notices prior to acquisition of the Suit property. However, mere issuance of public notices in newspapers by itself cannot be treated as sufficient discharge of the obligation to undertake proper and effective due diligence particularly in transactions concerning immovable property involving long-standing family arrangements and competing claims. Such argument of the Defendants is *prima facie* dishonest and borders on deceit and falsehood and their conduct is *malafide*.

32. In the facts of the present case, the surrounding circumstances and prior documents themselves disclose existence of rival claims and separate branches asserting rights in the Suit property. Once such circumstances exists, a much higher degree of due diligence, caution and inquiry is expected from the intending purchasers. *Prima facie,* Defendant Nos.6 and 7 and/or the subsequent purchasers ought to have directly approached the Plaintiffs and sought clarification regarding their claim before proceeding with acquisition of the Suit property. The record at this stage does not indicate that any such meaningful inquiry was ever undertaken.

33. *Prima facie*, the obligation to undertake due diligence cannot be reduced to a mere formality of publishing notices in newspapers particularly when parties to the transaction were themselves aware of competing claims in respect of the Suit property. The material on record, especially the email dated 24.05.2018 and prior negotiations with Plaintiffs, *prima facie* indicate that Defendant Nos.1 and 2 were fully conscious of Plaintiffs' claims. Once such knowledge existed, the purchasers were expected to exercise greater caution and verify the position directly with Plaintiffs before proceeding further with the transaction. Their argument of being *bonafide* purchasers for value is therefore fraudulent as it will virtually oust the Plaintiffs' 50% undivided share and right in the Suit property.

34. This Court is therefore unable, at this interlocutory stage, to accept the contention that Defendant No.4 and M/s. Aarsh Developers are innocent / *bona fide* purchasers entitled to equitable protection. Equity aids a vigilant and *bona fide* purchaser and not a party who proceeds with a transaction despite circumstances warranting serious inquiry into title. *Prima facie,* if the purchasers chose to proceed despite clear indicators of disputed title and competing claims, they did so entirely at their own risk and therefore they will have to face the consequences of their actions.

35. The cumulative circumstances placed on record namely; various partnership deeds and MOU, acknowledgment of Plaintiffs' share by Defendant Nos.1 and 2, negotiations undertaken with Plaintiffs for purchase thereof, execution of transactions behind Plaintiffs' back thereafter, absence of meaningful inquiry by purchasers despite knowledge of rival claims and commencement of construction activities during pendency of serious disputes, *prima facie* indicate that the transactions in question are not free from suspicion. At this interlocutory stage, the material placed on record sufficiently establishes existence of substantial triable issues requiring adjudication at the trial and a case is made out by Mr. Kamat for grant of interim relief. Hence, Plaintiffs undivided 50% share will have to be protected and it cannot be allowed to be usurped by the Defendants.

36. It is not in dispute that construction and development activities have commenced on the Suit property. However, merely because construction activities have commenced or certain expenditure may have been incurred by Defendants, the same by itself cannot defeat Plaintiffs' substantive right if otherwise established in law. If construction activities are permitted to continue unchecked during pendency of the Suit and third-party rights are further created, the nature and character of the Suit property would undergo an irreversible change thereby rendering final adjudication ineffective and giving rise to multiplicity of proceedings. All activities of the

Defendants therefore need to be halted especially in the above strong factual circumstances.

37. Hence, I am of the considered opinion that the balance of convenience clearly lies in favour of preserving the Suit property in its existing condition pending adjudication of rival claims. In the event interim protection is refused and further construction or alienation is permitted, Plaintiffs would suffer irreparable injury incapable of being adequately compensated in monetary terms. On the other hand, any prejudice likely to be caused to Defendants by grant of interim protection can always be compensated appropriately should Defendants ultimately succeed at trial.

38. The settled requirements for grant of temporary injunction namely; existence of a *prima facie* case, balance of convenience and likelihood of irreparable injury therefore stand satisfied in favour of Plaintiffs. Plaintiffs have thus made out a fit case warranting exercise of discretionary equitable jurisdiction in their favour.

39. This Court is also conscious of the fact that permitting further development and creation of third-party rights during pendency of the present proceedings would seriously complicate the controversy and may ultimately frustrate effective enforcement of any final decree that may be passed. Preservation of the Suit property pending final adjudication therefore becomes necessary in the interest of justice and to avoid multiplicity of litigation.

40. In view of the aforesaid discussion, this Court is satisfied that Plaintiffs have made out a strong *prima facie* case for grant of interim reliefs.

41. In view of the above observations and findings Interim Application is allowed with the following directions.

42. It is directed by this Court that pending hearing and final disposal of the Suit, Defendant Nos.1 to 8, their servants, agents, assignees, Developers or any person claiming through or under them are restrained by an order of temporary injunction from in any manner selling, transferring, alienating, encumbering, creating third-party rights, parting with possession and/or carrying out any further construction, development or alteration activities in respect of the Suit property.

43. Defendants are further restrained from interfering with Plaintiffs' undivided 50% share, right, title and interest in the Suit property pending final adjudication of the Suit.

44. It is further directed and clarified that all / any ongoing construction and development activities on the Suit property shall remain stayed forthwith until further orders of this Court. Defendants are further restrained from inducting any third party, executing any agreements for sale, allotment letters, development agreements and/or creating any equities in respect of the Suit property or development undertaken therein pending disposal of the Suit. It is clarified that all acts undertaken by any party during pendency of the present proceeding shall be subject to the final outcome of the Suit.

45. It is clarified that any observations made herein are *prima facie* in nature and confined only for deciding the present Interim Application for injunction. The Court shall decide the Suit on its own merits uninfluenced by any observations made in this order on the basis of evidence at trial.

46. Liberty to apply to Court. All rights and contentions of the parties are expressly kept open.

47. List the Suit No.80 of 2025 on **31st July, 2026 for directions.**

48. Interim Application No.1941 of 2024 is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

49. After the above order is pronounced, Ms. Shah appearing for Defendant No.4 persuades the Court to hold in abeyance the above order to enable the said Defendants to challenge the legality and validity of the order in Appeal. I have considered her request. However, in view of the strong *prima facie* observations and findings returned in the above order, I am not inclined to accept the request for stay made by Ms. Shah. The request made by Ms. Shah stands rejected.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE
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