

|                                                                                                       |               |   |                      |
|-------------------------------------------------------------------------------------------------------|---------------|---|----------------------|
| MHRG170015832022<br> | Received on   | : | 10.08.2022.          |
|                                                                                                       | Registered on | : | 10.08.2022.          |
|                                                                                                       | Decided on    | : | 18.04.2024.          |
|                                                                                                       | Duration      | : | Y M Days<br>01 08 08 |

I N T H E D I S T R I C T C O U R T  
A T P A N V E L  
D I S T R I C T - R A I G A D

[ Presided over by K.G. Paldewar, District Judge-2, Panvel ]

**MISCELLANEOUS CIVIL APPEAL NO.35/2022.**

**EXHIBIT NO.17**

1. Shri.Chimaji Umaji Pingale,  
Age – 86 years,  
Occupation – Agriculture,
2. Shri.Anant Chimaji Pingale,  
Age – 65 years,  
Occupation – Agriculture,
3. Shri.Arun Chimaji Pingale,  
Age – 59 years,  
Occupation – Agriculture,
4. Shri.Kisan Chimaji Pingale,  
Age – 49 years,  
Occupation – Agriculture,

5. Shri.Balu Chimaji Pingale,  
Age – 44 years,  
Occupation – Agriculture,
6. Shri.Raghunath Chimaji Pingale,  
Age – 57 years,  
Occupation – Agriculture,

All r/o. Rajpe, Tal.Karjat,  
Dist.Raigad.

Appellants No.3 and 6 for themselves  
and as a Power of Attorney of  
appellants No.1, 2, 4 and 5.

...**APPELLANTS**  
(Original Defendants  
No.1 to 6 )

**VERSUS**

1. Smt.Sushila Dattu Tunge,  
Age – 68 years,  
Occupation – Agriculture,  
R/o. Rajpe, Tal.Karjat,  
Dist.Raigad.
2. Sau.Jamnabai Eknath Nildhe,  
Age – 54 years,  
Occupation – Housewife,  
R/o. Tembhare, Tal.Karjat,  
Dist.Raigad.

... **RESPONDENT**  
**NO.1**  
(Original Plaintiff)

... **RESPONDENT**  
**NO.2**  
(Original Defendant  
No.7)

**CLAIM :**            **APPEAL UNDER ORDER XLIII RULE-1 (r) OF  
THE CODE OF CIVIL PROCEDURE.**

**APPEARANCES:**

\*\*\*\*\*

Advocate Shri.D.R.Gaikwad for Appellants.  
Advocate Shri.VT.Kulkarni for Respondent No.1.  
Advocate Smt.S.S.Kadikar for Respondent No.2.

\*\*\*\*\*

**J U D G M E N T**  
**[DELIVERED ON 18<sup>th</sup> DAY OF APRIL, 2024]**

Defendants No.1 to 6 to Regular Civil Suit No.110/2021 filed present appeal vide Order XLIII Rule-1 (r) of the Code of Civil Procedure against the Order passed by Civil Judge Junior Division, Karjat Dated 01.07.2022 allowing the application vide Exh.05 for grant of temporary injunction against defendants.

2.            The parties are hereinafter referred as per their original status to the suit for the sake of convenience.

**POINTS FOR DETERMINATION :**

3.            In the light of rival submissions and on perusal of the record, following points arise for the determination to

which I recorded my findings for the reasons stated below ;

| SR.NO. | POINTS                                                                                                   | FINDINGS                                 |
|--------|----------------------------------------------------------------------------------------------------------|------------------------------------------|
| I.     | Whether suit properties are ancestral properties?                                                        | Yes.                                     |
| II.    | Whether plaintiff has undivided interest in the suit properties?                                         | Yes.                                     |
| III.   | Whether the plaintiff is entitled to the relief of injunction to the suit properties in terms of prayer? | Partly Affirmative.                      |
| IV.    | Whether the order passed by learned trial Court needs interference by this Court ?                       | Partly Affirmative.                      |
| V.     | What order ?                                                                                             | The Appeal is Partly Allowed with Costs. |

### **REASONS**

**AS TO POINTS NO. I TO V :**

**DESCRIPTION OF THE SUIT PROPERTIES :**

4.A) All that the part and parcel of the following properties situated at village Rajpe, Tal.Karjat, Dist.Raigad ;

| <b>Sr. No.</b> | <b>Survey Number<br/>(New Survey Number in bracket)</b> | <b>Block Number</b> | <b>Area</b>                       | <b>Revenue Assessment</b> |
|----------------|---------------------------------------------------------|---------------------|-----------------------------------|---------------------------|
| 1.             | 22                                                      | 1                   | 1-17-40<br>Follow land<br>0-06-80 | 1-94                      |
| 2.             | 23                                                      | 3                   | 0-01-00                           | 0-02                      |
| 3.             | 23                                                      | 2/C                 | 0-78-20<br>Follow land<br>0-05-80 | 4-91                      |
| 4.             | 29                                                      | 1                   | 0-99-06                           | 0-78                      |
| 5.             | 29                                                      | 2/B                 | 0-20-00                           | 0-19                      |
| 6.             | 32                                                      | 5                   | 0-33-00<br>Fallow land<br>0-01-00 | 0-31                      |
| 7.             | 84(58)                                                  | 10                  | 0-16-00<br>Fallow land<br>0-02-00 | 0-11                      |
| 8.             | 84(58)                                                  | 8                   | 0-91-00<br>Fallow land<br>0-10-00 | 0-66                      |

B) All that the part and parcel of the following properties situated at village Pachkhadakwadi, Tal.Karjat,

Dist.Raigad ;

| <b>Sr. No.</b> | <b>Survey Number<br/>(New Survey Number in bracket)</b> | <b>Block Number</b> | <b>Area</b>                       | <b>Revenue Assessment</b> |
|----------------|---------------------------------------------------------|---------------------|-----------------------------------|---------------------------|
| 1.             | 63(18)                                                  | 8/B/2               | 1-53-00<br>Fallow land<br>0-10-00 | 1-22                      |
| 2.             | 65(20)                                                  | 2/B                 | 2-65-10<br>Fallow land<br>0-40-00 | 6-97                      |
| 3.             | 67(22)                                                  | 7                   | 0-76-00<br>Fallow land<br>0-08-70 | 0-69                      |

C) All that the part and parcel of the following properties situated at village Jamrung, Tal.Karjat, Dist.Raigad ;

| <b>Sr. No.</b> | <b>Survey Number<br/>(New Survey Number in bracket)</b> | <b>Block Number</b> | <b>Area</b>                       | <b>Revenue Assessment</b> |
|----------------|---------------------------------------------------------|---------------------|-----------------------------------|---------------------------|
| 1.             | 50(27)                                                  |                     | 0-03-30                           | 0-06                      |
| 2.             | 51(28)                                                  | 5                   | 0-60-00<br>Fallow land<br>0-06-00 | 0-69                      |

|    |        |   |                                   |      |
|----|--------|---|-----------------------------------|------|
| 3. | 52(29) |   | 0-09-60<br>Fallow land<br>0-05-30 | 0-84 |
| 4. | 53(30) |   | 0-45-70<br>Fallow land<br>0-44-30 | 4-03 |
| 5. | 54(31) | 2 | 1-25-00<br>Fallow land<br>0-17-00 | 0-97 |

D) All that the part and parcel of the following properties situated at village Kamatpada, Tal.Karjat, Dist.Raigad ;

| Sr. No. | Survey Number<br>(New Survey Number in bracket) | Block Number | Area    | Revenue Assessment |
|---------|-------------------------------------------------|--------------|---------|--------------------|
| 1.      | 57(26)                                          | 3            | 0-45-00 | 0-06               |

(Hereinafter above properties are referred as suit properties for the sake of convenience.)

5. **GENEALOGY OF PARTIES :**

The common ancestor of the family was one Krishna Pingale. He expired in the year 1938 survived by son

Umaji Pingale. The son Umaji Pingale expired in the year 1975 survived by six sons namely Narayan, Shankar, Maruti, Bhagaji, Chintaman and Chimaji (defendant No.1). The present dispute is restricted to the extent of branch of son Chimaji-defendant No.1.

6. The plaintiff – Sushila and defendant No.7-Jamnabai are the daughters of Chimaji -defendant No.1. The defendants No.2 to 6 are the sons of Chimaji -defendant No.1. In short, the daughter has filed suit for partition and separate possession in respect of suit properties during lifetime of father impleading her father, brothers and sisters as party to the suit.

**NATURE OF SUIT PROPERTIES AS ANCESTRAL PROPERTIES :**

7. According to the plaintiff, she is daughter of defendant No.1. She is co - parcener. The properties holding by defendant No.1 are ancestral properties. She has not released her share in the suit properties. She has undivided interest in the suit properties. The defendants are intending to alienate the suit properties as such, she prayed for injunction to restrain defendants from creating third party interest or alienation by any mode of transfer.

8. Defendants appeared and objected the application for injunction on the ground that after demise of grandfather of plaintiff namely Umaji in the year 1975, it was partition between defendant No.1 and his rest five brothers. The suit properties came to share of defendant No.1. Thus the suit properties are separate properties of defendant No.1. The plaintiff has no undivided interest since the said ancestral properties ceased to be ancestral properties/joint family properties. The defendant No.1 is absolute owner and has right to make disposition of the suit properties and accordingly, he assigned the suit properties to his sons by virtue of registered partition deed to which plaintiff and defendant No.7 are the signatories as witness.

9. The claim of plaintiff is of undivided interest in the ancestral properties whereas according to the defendant No.1, the suit properties are received to him by virtue of partition vide Section 8 of the Hindu Succession Act relying upon the observation of Hon'ble Apex Court in the case of **Uttam V/s. Saubhag Singh AIR 2016 Supreme Court 1169.**

10. Needless to mention, the legal position as to right of a daughter as coparcener is set at rest irrespective of a date of birth by virtue of Amendment to Section 6 of Hindu Succession Act and the observation of Hon'ble Apex Court in

the case of **Vineeta Sharma V/s Rakesh Sharma in Criminal Appeal No.32601 of 2018 dated 11.08.2020.** The observation of Hon'ble Apex Court in the case of Uttam V/s Saubhag Singh (supra) is by virtue of Section 8 of the Hindu Succession Act.

11. The father – defendant No.1 has received the suit properties in partition post demise of grandfather of plaintiff-Umaji amongst his sons. Thus the properties holding by father are the separate properties. However, once the son or daughter i.e. coparcener is in the family of father then the nature of properties holding by father as separate properties, then it becomes ancestral property of the said coparcener. Hon'ble Apex Court in the case of **Rohit Chauhan V/s. Surinder Singh AIR 2013 Supreme Court 3525** wherein it is observed 'the moment plaintiff was born, he got share in the father's property and became a coparcener.'

12. Thus once coparcener is born, the property loses character as separate property and coparcener is entitled for partition. The proposition in the case of Uttam (supra) has no application to the facts of present case. The suit properties are ancestral properties as such, the plaintiff as a coparcener has undivided interest in the suit properties. Thus I answer Points No.I and II in the affirmative.

**ENTITLEMENT TO THE RELIEF OF INJUNCTION :**

13. In the light of foregoing, the suit properties are ancestral properties and the plaintiff has undivided interest. The suit for partition on behalf of a daughter as a coparcener during lifetime of a father is maintainable. The daughter can ask for partition of the ancestral properties. The plaintiff and defendant No.7 as daughters have signed the registered partition deed by defendant No.1 to defendants No.2 to 6 as a witness thereof back to five years. However, the daughters have not relinquished their share in the suit properties. At the same time, pursuant to this partition deed, revenue entries are incorporated and the said partition is acted upon. Thus this acted upon partition whether amounts acquiescence to the plaintiff to concede partition and relinquishment of their share could be decided during course of trial. Thus this issue is kept open to this extent during course of trial.

14. Apart from this, prima facie the plaintiff has undivided interest in the suit properties. The mother of plaintiff i.e. wife of defendant No.1 is no more. Thus looking to undivided interest and shares of plaintiff, defendants No.1 to 7, then in that eventuality, they are entitled to equal share to the extent of  $1/8^{\text{th}}$  each. Thus the plaintiff is entitled to the

extent of undivided interest of 1/8<sup>th</sup> share in the suit properties. Defendants No.1 to 6 are intending to alienate the suit properties. This will frustrate the undivided interest of plaintiff in the suit properties. Thus the plaintiff is entitled to the relief of interim injunction to the extent of her share only. Hence, I answer Point No.III in the partly affirmative.

**WHETHER ORDER PASSED BY LEARNED TRIAL COURT  
NEEDS INTERFERENCE BY THIS COURT ?**

15. The learned trial court has not recorded reasoning and finding as to the ancestral properties and the coparcenary rights as well as undivided interest of plaintiff. The grant of injunction to the plaintiff absolute for the entire properties in fact is beyond the scope of undivided interest of the parties. This will cause prejudice to the undivided interest of other coparceners. Defendants No.1 to 7 have undivided interest in the suit properties as such, they can make disposition of their undivided interest. Thus the order of injunction passed by learned trial court has put embargo on the rights of other coparceners. Therefore the order of learned trial court needs interference by this court. The plaintiff is entitled to the relief of injunction to the extent of her undivided interest and not to the entire properties. Hence, I answer Point No.IV in partly

affirmative. In result, the appeal partly succeeds to the extent of undivided interest of plaintiff. With this, I pass following order;

**ORDER**

|    |                                                                                                                                              |                                                                                                                                                                                                                                                                |
|----|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | The appeal is partly allowed with costs.                                                                                                     |                                                                                                                                                                                                                                                                |
| 2. | The order of learned trial court passed below Exh.05 in Regular Civil Suit No.110/2021 Dated 01-07-2022 is set aside and modified as under ; |                                                                                                                                                                                                                                                                |
| 3. | The application for temporary injunction on behalf of plaintiff vide Exh.05 is partly allowed as under ;                                     |                                                                                                                                                                                                                                                                |
|    | i.                                                                                                                                           | Defendants No.1 to 6 are restrained from creating third party interest or alienation by any mode of transfer in favour of anyone to the extent of undivided interest of plaintiff – 1/8 <sup>th</sup> share to the suit properties, till disposal of the suit. |
|    | ii.                                                                                                                                          | The observation as above are restricted to the extent of this appeal only and learned trial court shall decide the suit on its own merits without being influenced by above observation.                                                                       |

|    |                                       |
|----|---------------------------------------|
| 4. | Inform to Learned Trial Court.        |
|    | Dictated and pronounced in open Court |

Place: Panvel.  
Date: 18.04.2024.

( K.G. Paldewar )  
District Judge-2, Panvel.

|                       |                                      |
|-----------------------|--------------------------------------|
| Arguments heard on    | 21 <sup>st</sup> Day of March, 2024. |
| Judgment delivered on | 18 <sup>th</sup> Day of April, 2024. |
| Dictated on           | 18 <sup>th</sup> Day of April, 2024. |
| Transcribed on        | 18 <sup>th</sup> Day of April, 2024. |
| Checked and signed on | 18 <sup>th</sup> Day of April, 2024. |

**CERTIFICATE**

I affirm that the contents of this PDF file  
Judgment/Order is same and as per the original  
Judgment/Order.

Name of the Stenographer : P.S.Mhatre  
Name of the Court : District Court-2, Panvel  
Date of Judgment/Order : 18.04.2024.  
Judgment/Order signed on : 18.04.2024.  
Presiding Officer : K.G. Paldewar  
Uploaded on : 18.04.2024.