

MHAH300006812020



Presented on : 22/03/2019

Registered on : 29/03/2019

Decided on : 20/02/2025

Duration : Y. M. Ds.
05 10 29

IN THE COURT OF DISTRICT JUDGE - 1, RAHATA,
TAL. RAHATA, DIST. : AHMEDNAGAR.
(Presided over by **Shri. Y. H. Ameta**)

Reg. Civil Appeal No. 155 of 2024.
(Old R.C.A. No. 37/2019)

Exh. no. 75.

Kundlik Kacharu Pawar,
Age : 73 Yrs., Occ. : Agril.,
R/o. - Savalivihir Khurd,
Tal. Rahata, Dist. Ahmednagar.

: Appellant.
(Ori. Def. no. 1)

VERSUS

1. Anjanabai Kacharu Pawar, (Dead)

Age : 95 Yrs., Occ. : Household,
R/o. Korhale,
Tal. Rahata, Dist. Ahmednagar.

: Respondent no. 1
(Orig. Plaintiff no. 1)

2. Vachhalabai Murlidhar Wagh,

Age : Major, Occ. : Household,
R/o. Panchale, Tal. Sinner, Dist. Nashik.

: Respondent no. 2
(Orig. Plaintiff no. 2)

3. Roshan Changdev Bansode,

Age : Major, Occ. : Household,
R/o. Korhale,
Tal. Rahata, Dist. Ahmednagar.

: Respondent no. 3
(Orig. Plaintiff no. 3)

4. Keshar Dagadu Tribhuvan,

Age : Major, Occ. : Household,
R/o. MSEB Colony, Kopargaon,
Tal. Kopargaon, Dist. Ahmednagar.

: Respondent no. 4
(Orig. Plaintiff no. 4)

5. Indu Ashokrao Gaikwad,

Age : Major, Occ. : Household,
R/o. Pimpari, Tal. Haweli, Dist. Pune.

: Respondent no. 5
(Orig. Plaintiff no. 5)

6. **Ranjana Ramesh Jagtap,**
Age : Major, Occ. : Household,
R/o. Akole, Tal. Akole,
Dist. Ahmednagar. : Respondent no. 6
(Orig. Plaintiff no. 6)
7. **Vijaya Popat Kambale,**
Age : Major, Occ. : Household,
R/o. Parakh site, near Khokhe company,
Vikroli, Mumbai. : Respondent no. 7
(Ori. Defendant no. 2)
8. **Saikrupa Buildwell Pvt. Ltd.** : Respondent no. 8
(Ori. Defendant no. 3)
- 8A. **Shri. Navinal Ratra,** : Respondent no. 8A
Age : Major, Occ. : Business, (Ori. Defendant no. 3A)
- 8B. **Shri. Rahul Kalsi,**
Age : Major, Occ. : Business, : Respondent no. 8B
(Ori. Defendant no. 3B)
- nos. 8, 8A and 8B, R/o. 1/74-75,
Lajpatnagar, New Delhi, 1100024

Appeal : Under Section 96 of Civil Procedure Code.

Advocates appeared :

Shri. H. D. Raktate, : Ld. Advocate for Appellant.
Shri. M. P. Gujrathi, : Ld. Advocate for Respondent nos. 2 to 7.
Shri. V. T. Shinde, : Ld. Advocate for Respondent nos. 8, 8A
and 8B.

: J U D G M E N T :

(Delivered on : 20/02/2025)

1. Present appeal seeks to assail the judgment and order dated 08/03/2019, thereby allowing and decreeing the original suit being R.C.S. no. 534/2004, instituted by instant respondent nos. 1 to 6. Present Appellant Kundlik Kachru Pawar, has been the defendant no. 1 in the original suit proceedings. For the sake of convenience parties are referred to by their status as Plaintiff/s and

Defendant/s in the original suit proceedings.

Shorn of unnecessary details, facts leading to the instant appeal are as follows :-

2. Original Plaintiff Anjanabai Kachru Pawar's husband Kachru Pawar expired on 08/12/1990, leaving behind widow Anjanabai, defendant no. 1 Kundlik Kachru Pawar as son and Plaintiff nos. 2 to 6 Vachalabai, Roshan, Keshar, Indu, Ranjana and defendant no. 2 Vijaya as daughters. These relations are undisputed. Suit property described in GAT no. 137 admeasuring 1H.18R is stated to be cestral property of deceased Kachru Shivram Pawar, being plaintiff Anjanabai's husband. Suit property description is also not disputed.

3. Kachru Pawar, since deceased, names of Anjanabai, Kundlik Kachru Pawar, Vachalabai, Roshan, Keshar, Indu, Ranjana and Vijaya, have been entered in the necessary revenue records. Accordingly, averred in the plaint that these persons had common possession of the suit property. Further averred in the plaint that about 3 weeks prior to the lodging of suit, partition was sought from defendant no. 1 Kundalik Pawar, however he refused, thereto. Also contended that plaintiff no. 1 Anjanabai, being illiterate, documents on which her thumb impressions have been taken by defendant no. 1 Kundalik, shall have no binding effect upon plaintiff Anjanabai. Also contended that defendant no. 1 Kundalik has illegally sold away the ancestral house and the said sale transaction is not binding upon the plaintiffs. Also submitted that now the defendant no. 1 Kundalik is not ready to make partition in the shared properties. Further submitted that a notice dated

03/12/2002 seeking partition, however defendant no. 1 Kundalik had not ready to partition the property. Hence the original suit being RCS no. 534/2004, seeking share in ancestral properties and also injunction orders against the contesting defendant no. 1 Kundalik.

4. Pending suit proceedings, defendant no. 1 Kacharu Pawar, had alienated part of the suit property to Saikrupa Buildwell Pvt. Ltd., 'Navinal Ratra' and 'Rahul Kalsi', by way of a registered sale deed. Therefore, suit came to be amended, whereby 'Saikrupa Buildwell Pvt. Ltd.', 'Navinal Ratra' and 'Rahul Kalsi', came to be arrayed as Defendant nos. 3, 3A and 3B, in the original suit proceedings, as per orders passed by the Ld. Trial Judge, below application 30.

5. Suit is resisted by contesting defendant no. 1 Kundalik Pawar, by filling his written-statement at Exh-15, in original suit proceedings, therein denying and disputing all the adverse claims made against him, in the plaint. Defendant no. 1 Kundalik Pawar, contends that he never obtained any signature or thumb impression of his mother Anjanabai, never misguided her, nor alienated any property.

6. It is further contended by the defendant Kundalik that, plaintiff nos. 2 to 6 and defendant no. 2 are his real sisters and that he got their marriage solemnized and also that for that purpose he had to time and again procure loans and also repaid it. Also contended that since the year 1971 till the year 1991, the suit properties were under occupation of plaintiff no. 4 Keshar Dagdu Tribhuvan's husband Dagdu Bhikaji Tribhuvan, by way of mortgage,

for amount of Rs. 3,000/-. Further, contended that for the said period of twenty years, plaintiff no. 4's husband Dagdu Tribhuvan has been cultivating said lands and taking its yields, but the possession of the said lands was with Defendant no. 1 only. Also contended that defendant no. 1 Kundalik Pawar, paid amount of Rs. 30,000/-, in the year 1991, to plaintiff no. 4 Keshar's husband Dagdu Tribhuvan and got back the suit properties.

7. It is also contended that defendant Kundaik Pawar, never ignored or deserted his mother Anjanabai. Also, contended that all the sisters, coercing the mother have filed this false suit. Further, contended that defendant Kacharu Pawar, is not intending to sale any of the suit property. Accordingly, contended to dismiss the suit.

8. Defendant no. 2 Vijaya Popat Kamble, by filing purshis Exh-48, admitted the contentions and prayers in the plaint filed by the plaintiffs.

9. Defendant no. 3 Saikrupa Buildwell Pvt. Ltd and defendant no. 3B Rahul Kalsi, resisted the suit, by filing their common written- statement at Exh. 44, in original suit proceedings and therein contending the plaint to be false, suit being non-maintainable. Further contended that the suit properties are '*Mahar Jagle, Inam Class-6B*' properties, therefore, Civil Court does not have jurisdiction, to try the suit. Also, contended that, females per law, are not vatandar, therefore, they would not have any right to file present suit, according disputing the female's locus-standi, has contended the suit to be dismissed.

10. It is also contended that, even if plaintiffs alongwith defendant no. 2 would be the legal heirs of deceased Kacharu Shivram Pawar, but they cannot be considered as legal heirs, in respect of '*Mahar Jagle, Inam Class-6B*' properties; but their names were entered in the revenue records, under class of 'other rights', vide Mutation entry no. 961. Further, contended that vide order dated 11/12/1992, passed by Tahsildar, Kopergaon, in RTS no. 777/1992, the rights of plaintiffs and defendant no. 2 were relinquished; and vide Mutation entry no. 1082, their names were removed from said revenue records.

11. Also contended that defendant no. 1 Kundalik Pawar, out of the suit properties sold 00-40R land to the defendant nos. 3, 3A and 3B, after taking earnest amount of Rs. 30,46,000/- at market rate vide registered sale-deed. Also contended that necessary permissions were obtained from the District Collector, Ahmednagar, in this respect. Thus, contended that as the said sale transaction has been done in due compliance of the provisions pertaining to '*Inam Class-6B*' properties, therefore plaintiffs cannot raise any objection, to this transaction.

12. Also contended that defendant no. 1 Kundalik, being the head of the family had procured various loans to meet the needs of the family and to repay the said loans have sold the property to defendant nos. 3 to 3B, under a valid transaction. Also contended that the defendant nos. 3 to 3B have in addition to sale consideration, have spent about Rs. 1,51,000/- for developing the purchased lands. Also contended that the defendant nos. 3 to 3B, did not have knowledge about the plaintiffs' name in the 7/12

extracts, so also did not have knowledge of the present pending suit, therefore these defendant nos. 3 to 3B are bonafide-purchaser, without notice. Accordingly, contended to dismiss the suit with costs of Rs. 1,00,000/-, to be awarded to each of defendant nos. 3 to 3B.

13. Upon issues been framed at Exh-50L, in support of the plaint, plaintiff no. 4 Keshar Dagdu Tribhuvan, had filed her affidavit of evidence at Exh, 52, therein repeating, reiterating and reproducing the contents of the plaint and also averring that defendant no. 1 Kundalik, has alienated part of the valuable suit property at a throw-away price been shown in the sale-deed; however, has obtained much more money, under the said sale transaction.

14. It gets revealed from the records, that inspite of repeated callings defendant no. 1, 2 and 3A being absent, therefore it has been recorded by the Ld. Trial Judge, in the evidence sheet, itself about the plaintiff's witness Keshar's evidence to be proceeded with 'No-cross' as far as defendant nos. 1, 2 and 3A are concerned. However, plaintiff Keshar, appears to be cross-examined at length, at the instance of defendant nos. 3 and 3B. Later on, vide order dated 02/11/2017 passed below Exh. 1, the original suit proceedings came to be proceeded with the defence of defendant no. 1 Kundalik Pawar been struck-down, for non-compliance of order dated 03/09/2004, passed below application Exh. 16 in the original suit proceedings.

15. In her cross-examination, Keshar Tribhuvan, admitted that the suit properties, are '*Mahar Jagle, Inam*' properties and were given to their grand-father and thereafter were passed on to their

father. She also admitted that her father died on 08/12/1990. However, Keshar Tribhuvan has answered that she has no knowledge about said properties, been given to her grand-father as a 'vatandar' or otherwise. She denied that after father's demise, defendant Kundalik looked after the affairs of the properties. She also denied about their names are not in the 7/12 extracts, She also denied that vide Mutation entry no. 1082, their names are deleted from the revenue records, vide Tahsildar's orders. She has answered in cross-examination that she has verified the amount of sale-consideration, mentioned in the sale-deed between defendant Kundalik and purchaser defendants, and also the market value thereof. She also admitted that defendant Kundalik decides as to which crop to be cultivated, in which part of the property. Rest of the suggestions, about Kundalik having taken loans by mortgaging the property, there being no arrangement of water in the fields, are denied by plaintiff Keshar. She answered that defendant Kundalik never shared agricultural proceeds benefits with the sisters. She has also admitted that they are not given any share in the suit properties.

16. Per contra, contesting defendant no. 1 Kundalik Pawar, defendant no. 3 Saikrupa Buildwell, defendant no. 3A Navnil Ratra and defendant no. 3B Rahul Kalsi, did not lead any evidence, at trial.

17. Ld. Civil Judge Junior Division, vide its judgment and order dated 08.03.2019 allowed and decreed the suit being RCS no. 534/2004, interalia observing that, defendant no. 1 Kundalik Pawar's defence been struck down, for non-compliance of order

passed under application Exh. 16 in the suit proceedings, hence he had no chance to cross-examine the plaintiff's witness; no circumstances of legal necessity been proved by contesting defendant; defendant no. 3 did not adduce any documentary evidence to prove that the plaintiffs and defendant no. 2 relinquished their shares in the ancestral property; Mutation Entry no. 1082 itself not sufficient to prove relinquishment of shares; as relationship between parties been admitted therefore notional partition shall open up upon death of Kachru Pawar on 08/12/1990 with plaintiff no. 1 Anjanabai and defendant no. 1 Kundalik to be entitled to $3/8^{\text{th}}$ share and each daughter to be entitled to $1/24^{\text{th}}$ share in the suit property; the suit been preferred well within period of limitation from date of notice to the defendant no. 1 Kundalik, and also from the date of sale deed executed between defendant no. 1 Kundalik and defendant nos. 3 to 3B vendees; no defect of non-joinder of necessary parties; plaintiffs' prayer of sale-deed dated 22/05/2009 not binding upon them being legal and considerable; and also that defendant nos. 3 to 3B seeking compensatory costs against plaintiff not maintainable as suit neither frivolous nor malicious.

18. Assailing the said judgment and order Ld. Advocate for the appellant, being the original defendant no, 1 Kundalik Kachru Pawar, vehemently argues that the impugned judgment and order is not legal, not proper, not as per principles of natural justice, having not considered the evidence borne on record and also that observations and findings by Ld. Trial Court are not supported by evidence.

19. It is argued that after Kachru Pawar's death, Kundalik's mother and all sisters, relinquished their rights, in favour of Kundalik, in the year 1992, accordingly Mutation Entry no. 1082, was effectuated. Thus, argued that therefore, mother and sisters cannot claim any share in the suit properties.

20. It is also contended that paragraph no. 15 in Kundalik's Written Statement clearly mentions about the properties to be of 'Inam Class' therefore cannot be transacted. It is also contended that the suit properties, being classified, therefore even the Civil Court would not have any jurisdiction, to adjudicate any dispute, pertaining to those lands; and that only Collector is empowered to do so. It is submitted that upon part of the suit lands been alienated to defendant nos. 3 to 3B, all including Kundalik received consideration amount.

21. It is also contended that, the 'Bombay Hereditary Offices Act, 1874, as per its section 51, prohibits females from claiming interest or right to transact in the vatan properties. But no such issue has been framed by the Ld. Trial Court. It is also argued that since the suit properties were got to the father Kacharu Pawar as 'Vatan' land, therefore, the said properties, were not joint family properties; therefore, mother and sisters could not have claimed shares in the said suit properties.

22. It is also contended that the Trial Court did not consider that mother Anjanabai had preferred a Criminal Misc. Application no. 114/2014, under which Kundalik, has been directed to pay monthly maintenance of Rs. 400/- to Anjanabai, and Kundalik had paid amount to the extent of Rs. 1,20,000/- to Anjanabai. It is

contended that the Trial Court did not take that aspect into consideration, but just passed ordered striking down the defence of defendant Kundalik. Placing reliance on **Union of India Vs. Filip Tiago DeGama, AIR 1990 SC 981**, it is argued that Court ought to have stricked balance and given opportunity to all parties, including defendant Kundalik, but that was not done so. Accordingly, impugned judgment and order is disputed and contended to be set-aside.

23. Ld. Advocate for Defendant nos. 3 to 3B, being the Respondent nos. 8 to 8B in present appeal proceedings also argued, disputing the impugned judgment and order. It is contended that these defendants being 'Saikrupa Buildwell Pvt. Ltd.', 'Navinal Ratra' and 'Rahul Kalsi', have purchased part of the suit property from Defendant Kundalik Pawar. It is argued that Kundalik Pawar is the only 'Vatandar', in respect of the suit properties, as it being 'Inferior Vatan Lands'. It is argued that as per the Act, females cannot be vatandars of such properties. Further argued that per Mutation Entry no. 1583, Collector accepted Kundalik Pawar as the 'Vatandar' and 'owner' in respect of the suit properties. It is also contended that the plaintiff's only witness also admitted Kundalik to be the 'Vatandar'. Accordingly, argued that the sale-deed executed by defendant Kundalik Pawar in favour of Defendants Saikrupa Buildwell Pvt. Ltd., 'Navinal Ratra' and 'Rahul Kalsi', is legal and proper. It is also argued that defendant Kundalik Pawar, procured all necessary permissions from Collector.

24. It is argued that, as mother and sisters relinquished their rights vide Mutation Entry no. 1082, in the year 1993, by giving

affidavits which the Collector accepted; therefore, now cannot claim share in the suit property and also cannot dispute this sale transaction.

25. It is contended that plaintiff witness also admitted that they are on visiting terms with defendant Kundalik, therefore plaintiffs are in collusion with the defendant Kundalik Pawar, and this is a collusive suit, to avoid defendants Saikrupa Buildwell Pvt. Ltd., 'Navinal Ratra' and 'Rahul Kalsi', have possession of their purchased property. It is also argued that present suit claiming partition, as plaintiff witness admitted that they do not have share in the suit property. It is argued that in the entire suit proceedings defendants Saikrupa Buildwell Pvt. Ltd., 'Navinal Ratra' and 'Rahul Kalsi', are the real victims. Accordingly, contended to allow the appeal and set-aside the impugned order. Impugned judgment and order, is accordingly disputed and contended to be quashed, set aside and further claimed for dismissal of the suit in the appellant/original defendant no. 1 Kundalik Pawar's favour by allowing the instant appeal.

26. Ld. Advocate for defendant nos. 3 to 3B, being the suit property purchasers rejoined his arguments contending that the aspect of a person being legal heir is governed by a General Act, whereas, the suit properties being 'Vatan Lands' are governed by a Sepcial Act. Act pertaining to Vatan Lands differ from the general Act and empowers only the Collector to adjudicate any issue pertaining to vatan lands. Also contended that Mutation Entry no. 961, whereby mother and sisters' name were included in the revenue records, was done under a General Act and not as per the 'Vayan Acts'.

27. It is also argued that as mother and sisters are not Kacharu Pawar's legal heirs as per the Vatan Act, therefore, there was no need of any relinquishment deed from the mother and the sisters. Also argued that co-owners differ from co-sharers, therefore **Sant Ram Vs. Daya Ram AIR 1961 Punjab 523**, shall not apply, in this case. Also contended that as the suit properties are vatan-lands, therefore suit is not maintainable, without Collector's permission. It is contended that the question for determination shall be that whether the personal law being the Hindu Law shall prevail or the Special legislation Vatan Acts, shall prevail. Accordingly, contended for dismissal of suit by allowing the present appeal.

28. Impugned judgment and order, is supported by the original plaintiffs the defendant no. 2, and their Ld. Advocate vehemently contending that the relationships not being disputed, Kacharu Pawar died intestate, vide Mutation Entry no. 961 approved on 11/7/1991 names of mother, all sisters and Kundalik were entered in the revenue records as the legal heirs of Kacharu Pawar, therefore the mother and the sisters of defendant no. 1 Kundalik Pawar, are entitled to shares in the properties begotten to them as co-owners, pursuant to Kacharu Pawar's death. It is also contended that pending the present suit proceedings, Kundalik Pawar, alienated part of the suit properties, for sale consideration, of Rs. 1,50,00,000/- to defendants Saikrupa Buildwell Pvt. Ltd., 'Navinal Ratra' and 'Rahul Kalsi'. Further argued that as the said sale transaction is behind the back of the mother and sisters and being pendente-lite, therefore would not be binding upon mother and sisters.

29. Placing reliance upon **Sant Ram** (supra), it is vehemently contended that the Mutation Entry no. 961, has never been disputed nor challenged by anybody, therefore, mother and sisters' rights in the suit property cannot be disputed. Further argued that Mutation Entry no. 1082, whereby some sisters' share is claimed to be relinquished, shall be of no avail to the contesting opponents, as the same is not supported by any registered document as required under section 17(1) of the Registration Act. Placing reliance on **Smt. Sawarni Vs. Smt. Inder Kaur And others, AIR 1996 SC 2823**, further argued that the legal position is settled that the Mutation Entries neither create/confer nor extinguish any title, in any property. It is contended that mother and sister's rights in the suit properties also get proved as Kundalik Pawar did not reply to the notice sent to him, prior to preferring this suit.

30. It is argued that main suit also contained prayers that the defendant no. 1 Kundalik be injuncted and restrained from alienating the suit properties in any manner, therefore had already raised the bar of lis-pendence. Accordingly, argued that for the said reason also the sale transaction pendente-lite, cannot be binding upon the mother and sisters. It is also contended that now the mother is too aged and dependent upon her daughters, whereas defendant Kundalik Pawar is enjoying all the yields from the suit property. It is also argued that mere possession of suit property by one of the co-owners would not ouster the rights of other co-owners, in the suit properties. Further contended that there is no evidence, that defendant Kundalik Pawar arranged the marriages of his sisters.

31. It is also argued that defendant Kundalik had averred and denied in his Written Statement about alienating the suit property, claiming it to be 'Inam Varg' properties, but subsequently in the year 2009, sells part of the suit property for Rs. 1,50,00,000/-. It is also contended that said pendente-lite alienation has been later on been admitted by defendant Kundalik Pawar. It is contended that the said sale transaction shall be hit by the bar of section 52 of the Transfer of Properties Act. Further, contended that the pendente-lite purchasers also arrayed as parties in the present original suit proceedings. Also contended that as the sale transaction is effectuated pending the original suit proceedings, therefore purchasers cannot take defence of 'Bonafide purchaser'.

32. Further contended that defendant Kundalik Pawar, never raised the defence of suit properties to be 'Vatandar Lands'; therefore, the subsequent purchasers stepping in shoes of their vendor, cannot be subsequently permitted to raise such a defence. Further contended that defendant Kundalik Pawar has not paid a single penny in compliance of maintenance order passed below application Exh. 16, in this suit proceedings, in favour of mother Anjanabai. IT is further contended that as defendant Kundalik did not comply with the order passed below Exh. 16, therefore vide order dated 02/11/2017, defendant Kundalik's defence is stricked out. Also contended that said order is neither challenged nor got set-aside, therefore has attained finality. Further argued that therefore due to non-payment of maintenance amount to the mother by Kundalik, therefore now mother Anjanabai shall also have charge over Kundalik's share in the said properties.

33. It is also contended that in the suit proceedings, evidence was led only by the plaintiffs; contesting defendants Kundalik Pawar and purchasers did not led any evidence. It is argued that therefore, there is no evidence in trial, of being a bonafide purchaser. It is arfued that these aspects ought to be pleaded, then proved by evidence and then argued; mere arguments would not suffice. Also contended that as defendant nos. 3 to 3B Saikrupa Buildwell Pvt. Ltd., 'Navinal Ratra' and 'Rahul Kalsi', have not challenged the decree passed in the original suit, therefore the same attains finality as against them.

34. It is further argued that the suit was filed in the year 2002, and has been decided in the year 2019, considering the legal position prevailing in the year 2002, and has ignored the change in legal position in this respect in the year 2004, vide the landmark ruling of **Ganduri Koteshwaramma & Anr. Vs. Chakari Yanadi & Anr 2012(1) All MR 443 (S.C.)**. It is argued that as per the ruling of Ganduri, benefits ought to be passed on to the mother and sisters and they would be entitled to equal share in the suit property and that effect is required to be given in the final decree, to be drawn. Accordingly, contended to modify the shares declared in the impugned judgment and order and give equal shares to all heirs if Kacharu Pawar. Accordingly, contesting respondents being the original plaintiffs alongwith defendant no. 2 Vijaya, vehemently contended to dismiss the appeal claiming it to be devoid of merits; and claimed to re-calculate and declare equal shares of all the heirs of Kacharu Pawar.

35. Upon perusing the record and proceedings made

available and also hearing the advocates for either party, at length, following issue arise for consideration, for which the findings are recorded against each of them, for the reason following thereafter.

Sr. No.	ISSUE	FINDINGS.
1.	Whether original plaintiffs had proved that the suit land is the joint family property of themselves and original defendant nos. 1 and 2?	: Yes.
2.	Whether original defendant no. 3 to 3B proved that original plaintiffs and original defendant no. 2 have relinquished their share?	: No.
3.	Whether original plaintiffs and defendant no. 2 are entitled to partition of the suit land? If yes, what are the shares of the parties?	: Yes. Per impugned judgment and order.
4.	Whether the suit is proved to be barred by limitation?	: Not Proved.
5.	Whether the suit is proved to be bad for non-joinder of necessary parties?	: Not Proved.
6.	Whether the original defendant nos. 1 and 3 to 3B proved that defendant no. 1 has sold part of the suit property for legal necessity?	: Not Proved.
7.	Whether defendant nos. 3 to 3B are entitled to compensatory costs as prayed?	: No.
8.	Whether impugned judgment and order requires any interference in this appeal?	: No.
9.	What order?	: As per final order.

: REASONS :

36. Before advertng into the dispute at hand, it would be

necessary to sum-up the undisputed aspects of the present appeal. Relationships inter-se parties are undisputed; date of Kacharu Pawar's death is undisputed; Kacharu Pawar having died intestate is undisputed; description of properties is not disputed; extent of shares as adjudicated by Ld. Trial court not disputed; fact of defendant no. 1 Kundalik Pawar having alienated part of the suit property pendente-lite to defendant nos. 3 to 3B Saikrupa Buildwell Pvt. Ltd., 'Navinal Ratra' and 'Rahul Kalsi' for sale consideration of Rs. 1,50,00,000/- not denied; Mutation Entry no. 961 not disputed; Defendant no. 1 Kundalik Pawar has not claimed any part of the suit property as self-earned; appellant being defendant no. 1 Kundalik Pawar's defence been struck down in the original suit proceedings; said order striking down Kundalik Pawar's defence not assailed nor got set-aside; original defendant nos. 3 to 3B Saikrupa Buildwell Pvt. Ltd., 'Navinal Ratra' and 'Rahul Kalsi', having not preferred any appeal against the against impugned judgment and order; and also that original plaintiffs and defendant no. 2 Vijaya Kamble have not preferred any appeal or cross-objection against impugned judgment and order. All above aspects appear to be undisputed facts, emerging in this appeal.

As to Point no. 4 :-

37. Suit is also resisted by the contesting defendants, claiming it to be barred by the law of limitation. However, nothing is borne on record by any of the contesting defendants, as to by how much period the suit is delayed. Factum of plaintiffs having notice dated 03/12/2002 Exh. 4/3 issued to defendant no. 1 Kundalik Pawar is neither disputed nor denied by defendant no. 1 Kundalik Pawar. Moreover, Kundalik Pawar has not even averred

about having answered the said notice. Be that so, vide said notice dated 03/12/2002 Exh. 4/3 plaintiffs have demanded partition and their share in the suit property. The fact that partition was not effectuated per said notice dated 03/12/2002 Exh. 4/3 therefore, cause of action shall arise as on the date of the service of the said notice on defendant Kundalik Pawar, as for reason of not responding to the said notice, Kundalik Pawar, has given rise to the cause of action in favour of the plaintiffs' to prefer the suit. Therefore, even if the date of service of notice be ignored and the date of issuance of said notice being 03/12/2002, is to be considered for computing limitation, then also said defence of limitation, does not appear to sustain. Perusal of Exh. 1 original plaint shall reveal it to have been filed on 20/12/2002, therefore, well within period of limitation. Thus, point no. 4, in appeal, stands answered accordingly.

As to Point no. 5 :-

38. Contesting defendant nos. 3 to 3B Saikrupa Buildwell Pvt. Ltd., 'Navinal Ratra' and 'Rahul Kalsi, have raised defence about non-joinder of necessary parties. However, it would be pertinent that contesting defendant Kundalik Pawar has in his written-statement Exh. 15 in the original suit proceedings, has in its paragraph no. 3 that the contents of paragraph nos. 1 and 2 of the suit plaint are true. Perusal of paragraph no. 2 in the suit plaint, would reveal it to be averring and disclosing the relationship between the plaintiffs and defendant nos. 1 and 2. If said aspect is admitted not disputed by contesting defendant no. 1 Kundalik Pawar, being the family member, then nothing remains for defendant nos. 3 to 3B Saikrupa Buildwells, Navanil Ratra and

Rahul Kalsi, to dispute the same; more specifically being outsiders to the family relationship. Moreover, no evidence is adduced at trial by these contesting defendants to prove that apart from the litigating persons, there are other lineal descendants flowing from Kacharu Pawar or any other person as his heir, left out from the suit proceedings. Therefore, for want of any evidence on that aspect, mere pleadings shall not be sufficient to consider the suit to be defective on account of non-joinder of necessary parties. Therefore, point no. 5, in the appeal, stands answered accordingly.

As to Point nos. 1, 2 and 3 :-

39. Plaintiffs in paragraph no. 1 and 2 have averred about the description of the suit property and the genealogy flowing through Kacharu Pawar. Said facts are admitted by the defendant no. 1 Kundalik Pawar in his Written Statement filed at Exh. 15 in the original suit proceedings. It would be pertinent that plaint in its paragraph no. 3 mentions about the properties to have come in the hands of Kacharu Pawar through his father as an ancestral property. Defendant Kachru has not denied the said factum cogently contending any adverse fact, rather has simplicitor denied it. It would be pertinent that defendant Kundalik Pawar does not whisper an iota in his Written Statement Exh. 15 about the suit property to be a '*Mahar Jagle, Inam Class-6B*' property. It would be further pertinent that defendant Kundalik Pawar has not even preferred any amended written statement to plead on record that the suit property was a classified property, subject to any restrictions. It is basic principle, first plead and then prove. Therefore, basically defendant Kundalik Pawar has not pleaded anything about the suit property to be Inam Class property.

Therefore, contesting defendants ought not to be permitted, to raise any such defence at a latter stage. It would be so, also because, in his written statement Kundalik Pawar, claimed to manage the affairs fo the said land, then in such circumstances, knowledge is imputed upon him, to know the entire details, nature and characteristics, intrinsic to the suit property, and is required to come forth with each and every such detail in his written statement. Having not done so, it ought to be considered that defendant Kundalik waives off such an aspect in his defence.

40. It is also pertinent that nowhere has contesting defendant Kundalik Pawar claimed or adduced any evidence that the suit properties or even any part of it, to be his self-earned property. Therefore, it gets proved that the suit properties come in the hands of the legal heirs of Kacharu Pawar, through Kacharu Pawar only, after his death in the year 1990.

41. It would be pertinent that per Exh. 4/2 being the Mutation Entry no. 961, names of plaintiffs as well as defendant no. 1 Kundalik and defendant no. 2 Vijay were recorded in the revenue records pertaining to the suit property. Factum of Mutation Entry no. 961 is not disputed by defendant Kundalik. Much stress is laid upon Mutation Entry no. 1082, dated 05/11/1993 Exh. 72, whereby plaintiffs and defendant no. 2 Vijaya are claimed to have relinquished their rights. It is settled position that mutation entries by itself do not create, confer, transfer, diminish or destroy any rights as to title to any property. Therefore, Mutation Entry 1082, cannot be resorted to contend that plaintiffs and defendant no. 2 Vijaya gave up their rights in the suit property. Further, if it is

contended by the contesting defendants that vide Mutation Entry no. 1082, rights in the property are given up; then it would clearly mean that there were some rights; because if right would be there, then only aspect of relinquishing would come up, and not otherwise. Therefore, if Mutation Entry no. 1082 is relied upon, means there were rights. Therefore, contesting defendant now cannot come up with any argument that plaintiffs did not have any right in the suit property. Contesting defendants would definitely be estopped from raising such a defence.

42. Mutation Entry no. 1082 also cannot have any effect for the reason that, if it intends to reflect about Kundalik's mother and sisters having relinquished their shares, then the same is required to be supported by a duly registered document. It is so, because section 17 of The Registration Act, 1908, stipulates that,

“17. Documents of which registration is compulsory.

The following documents shall be registered,,

(a)..... ;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c)”

Now, this being a statutory enactment, but naturally shall have its effects and application to all such documents purportedly referred as relinquishment deeds. In the case at hand, any of the contesting defendant has not adduced any evidence on record, to prove that Mutation Entry no. 1082 was supported by any registered

document. It is again a settled position that, any document or transaction statutorily requiring registration, shall have no effect and even cannot be read in evidence, if is not registered, as required, by law. Therefore, once it gets proved that Mutation Entry no. 1082 is not backed by any registered document, then such revenue entry, shall not have any force of law, and neither can be read in evidence nor can be said to have the effect it purports to portray. Therefore, Mutation Entry no. 1082, shall be of no avail to the contesting defendants to agitate that Kundalik's mother and sisters have relinquished their share in suit properties, flowing down in their hands, pursuant to Kacharu Pawar's death.

43. Now, this would lead to consider the effects of Mutation Entry no. 961, dated 17.05.1991 through which Kundalik's mother and sister claim their names been entered alongwith Kundalik's name in the revenue record. Here it would be pertinent that, said Mutation Entry no. 961, is not a result of any transaction, gratuitous or for consideration. It would be pertinent that Kundalik's father Kacharu Pawar died on 08.12.1990. Mutation Entry no. 961 is recorded on 17.05.1991, i.e. undisputedly consequential to Kacharu Pawar's death. Therefore, it becomes undisputed that Mutation Entry no. 961, is not a result of any transaction; rather is effect of transmission, resulting due to Kacharu Pawar's death. Part of section 17(1)(c) of The Registration Act, 1908, reproduced hereinabove, does not stipulate any such document / instrument resulting from transmission, would require registration. Therefore, Mutation Entry no. 961 would not be hit by any such statutory requirement requiring registration. Therefore, but naturally Mutation Entry no. 961, cannot be ignored, and shall

have its own force and applicability.

44. It has also been contended by the contesting defendants that the suit property is '*Mahar Jagle, Inam Class-6B*' and further relying upon section 51 of the Bombay Hereditary Offices Act, it is been stressed that females in the family would not have any right in the property. It is also contended that no issue has been framed by the Ld. Trial Court in this respect. It would be pertinent that, issue in the original suit proceedings is framed at Exh. 50L. Thereafter, vide order dated 23/02/2018, further issue pertaining to plaintiffs and defendant no. 2 relinquishing their rights, was framed, at the instance of defendant nos. 3 and 3B. Thus, contesting defendants had even submitted to add one more issue to the existing issues framed. However, the contesting the defendants did not request the Ld. Trial Court for framing any issue pertaining to maintainability of the suit, contending it to be '*Mahar Jagle, Inam Class-6B*' property. It would also be pertinent that contesting defendants did not prefer and application before the Ld. Trial Court for framing of such additional issue on this ground. Moreover, the issues framed were never disputed or agitated. Thus, having not raised the said contention, before the Ld. Trial Court, the contesting defendants factually cannot raise this issue at appellate stage, and they ought to be precluded from doing so. It would be more so, because, contesting defendants have not come up with the contentions that during the course of original suit proceedings, they never knew about the suit property to be '*Mahar Jagle, Inam Class-6B*', property, and that they got knowledge about it, pending the appeal proceedings.

45. Now, even if it is to be considered that a legal contention may be raised at any stage, then also such contention cannot be available for the contesting defendants and would be estopped from raising so, for reason of defendant Kundalik's subsequent conduct pending the suit proceedings.

46. It would be pertinent that defendant no. 1 Kundalik has in paragraph no. 7 of his Written Statement Exh. 15, has averred that the suit property is a government 'Inam Class' property and cannot be transacted. Defendant Kundalik further in paragraph no. 10 of his Written Statement Exh. 15, has averred that he has not alienated any suit property, nor intends to do so. However, pending the original suit proceedings, defendant has alienated 0.40R out of the suit properties to defendant nos. 3 to 3B. Said sale transaction is not denied by defendant nos. 1 Kundalik or pendente-lite purchasers defendant nos. 3 to 3B. Infact defendant nos. 3 and 3B in their Written statement Exh. 44 have even admitted the said transaction and further averred about having paid earnest money of Rs. 30,46,000/- and that thereafter, defendant no. 1 Kundalik, had sought the permission for the said sale. It would be important that in view of the fact that suit pertaining to the same property was pending before a Court, however any contesting defendant did not seek and procure the permission of the Ld. Trial Court, for entering into said transaction. Moreover, defendant Kundalik, even did not bother to bring the said factum of pendente-lite sale transaction on record of the Ld. Trial Court. It appears that the subsequent pendente-lite purchasers are arrayed in original suit proceedings, at the instance of the plaintiffs, by their application Exh. 30 in the original suit proceedings. Thus, it seems of defendant no. 1

Kundalik, had alienated the part of the suit properties, in utter disregard to the original suit proceedings. So also, defendant Kundalik has alienated the said part properties, in contradiction, to his averments in his Written Statement Exh. 15. Any litigant cannot be permitted to state a particular thing and to act in contradiction to it. Therefore, the said sale transaction by defendant no. 1 Kundalik to defendant nos. 3 to 3B, pending litigation, is act of malafide and nothing more; moreso, because Kundalik did not bother to seek court's permission nor to bring the said factum of sale, on record.

47. In view of the fact that Kundalik Pawar in paragraph no. 7 in his written Statement Exh. 15, has clearly averred that, the suit properties cannot be transacted as being Inam Class lands; but has subsequently sold it pending litigation. Any litigant cannot be permitted to approbate and reprobate, in respect of a same aspect. Contesting defendant, more specifically defendant no. 1 Kundalik Pawar for the sake of objecting the suit, would state that the suit properties as Inam Land and cannot be sold; and on other hand sales it for his own conveniences. Therefore, defendant Kundalik, cannot be permitted to raise the defence of the suit lands to be 'Inam Class' lands, now due to contradictory conduct and ought to be estopped to raise such defence now in appeal.

48. It would be pertinent that contesting defendants have relied upon Mutation Entry no. 1583, Exh. 73 and is stated that Collector has accepted Kundalik Pawar as the 'Vatandar', in respect of the suit property. Perusal of the Mutation Entry no. 1583 at Exh. 73 in the suit proceedings, it appears from the recitals mentioned in

the said entry that the suit property has been abolished as inferior vatan village per section 4 of the Bombay Inferior Village Watans Abolition Act, 1958. Said recitals in the Mutation Entry are not disputed by contesting defendants. In such circumstances, other provisions of the Bombay Inferior Village Watans Abolition Act, 1958, shall also be applicable to said property.

49. Section 7 of Bombay Inferior Village Watans Abolition Act, 1958, provides as, “*7. Special rule of succeed to be void.- Any provision of law, usage or practice relating to the succession to any Inferior village watan whereby contrary to the personal law governing the parties the rule of primogeniture was followed and the female heirs were postponed in favour of male heirs, shall, on and from the appointed date, be void and cease to be in force.*”. A plain reading of section 7 of this Act, would mean that any usage or practice to succession pertaining to females contrary to personal law shall cease to be in force from the appointed date; i.e. this Act recognizes and also upholds the personal law relating to female succession. Therefore, the defence contention that personal law will not prevail cannot be sustainable, in view of section 7 of Bombay Inferior Village Watans Abolition Act, 1958. Thus, it also implies that Bombay Inferior Village Watans Abolition Act, 1958, does not oust the application of personal laws applicable to the parties, in respect of such properties. Thus, females’ rights/shares in such properties, cannot be presumed to be outrightly ousted or diminished from the suit property.

50. No doubt another defence is raised that per section 51 of ‘The Bombay Hereditary Offices Act, 1874’ plaintiffs cannot claim

any right as a 'watandar' in the suit property and therefore, the suit for partition shall not be maintainable. Said section 51 of the 'The Bombay Hereditary Offices Act, 1874' reads as, "*51. Female cannot officiate, but may nominate deputy.—No female shall perform in person the duties of any hereditary office; but if a representative watandar or the guardian of a representative watandar dies or resigns, she may appoint a deputy.*" If the said section is read in entirety, it would clearly mean that the rights of a female, in respect of a watan property, are not absolutely ousted. The said section merely clarifies the position and empowerment of a female, in case a representative would cease to be no more for any reason. It would be pertinent that the said section empowers the female to appoint a deputy. The section states that the female '*may*' appoint a deputy. However, contesting defendants, do not point out the position, in case a female does not appoint a 'deputy' per section 51 of the Act. Moreover, the use of word 'may', would mean that it would be mere directory and not mandatory for a female to appoint a deputy, in all such cases. That apart, a 'deputy' cannot act altogether independent and in violation or with an attitude of indifference against such female, appointing the 'deputy'. Therefore, the acts of such 'deputy' shall be governed by such female. The 'deputy' would be appointed for the mere conveniences of the female and not against her rights or interest. Therefore, section 51 of The Bombay Hereditary Offices Act, 1874, cannot be used as an absolute bar against the females. Moreover, nothing is borne on record, by the contesting defendants that after the death of Kacharu Pawar, Anjanabai had appointed any deputy or that contesting defendant Kundalik Pawar was appointed as a 'Deputy'. Moreover, no provision is pointed out by the contested defendants, about there being any concept of a 'deemed deputy'.

Therefore, section 51 of 'The Bombay Hereditary Offices Act, 1874', shall be of no much avail to the contesting defendants to resist the original suit. Moreover, it would be so, also for the reason of section 7 of the Bombay Inferior Village Watans Abolition Act, 1958, as considered hereinabove. In such circumstances, it cannot be said that **Sant Ram** (supra) does not have any applicability to present facts.

51. Contesting defendants have laid stress on an admission, by plaintiff's witness Keshar Tribhuvan, about they not having any share in the suit property. The specific words in the notes of evidence reads as, "हे म्हणजे खरे आहे की दावा मिळकतीमध्ये आम्हाला कोणताही हिस्सा नाही". Said part of evidence is not recorded in question-answer format, therefore, it would be hard to reconcile, as to what was the question, the answer and its implication. It is settled position that a stray admission by a rustic witness, to a tricky question by an advocate, shall not be always sufficient to counter such witness's case. This witness while she filed her affidavit of evidence Exh. 52 was a lady of 65 years old, having occupation of house-hold and agriculture. Therefore, meanings of her answers have to be gathered, in consideration to her attending circumstances. Present suit is filed by defendant Kundalik's mother and sisters seeking partition of suit property. It is indeed true, that as mother and sisters are not given any share, therefore, this witness Keshar states that they do not have any share. Witness Keshar has accepted the suggestion, as per the real factual position, as at that time. Said witness's answer reflects the situation in-presenti, at that time. Nothing appears from that statement about she having answered to any query based on legal position.

Moreover, a stray admission cannot over-ride a legal position. It would be pertinent that the said answer is consistent with the position that they were not given any share, therefore the original suit seeking partition. If Kundalik's mother and sisters would have been satiated or having no grievance, inspite of having given no share in suit property, then they would not have preferred instant suit. Therefore, any such stray admission, if at all, may be considered so, cannot be helpful to reject the suit.

52. Ld. Advocate for the original plaintiffs and defendant no. 2 Vijaya has vehemently contended that as per the ruling of **Ganduri** (supra), benefits ought to be passed on to the mother and sisters and they would be entitled to equal share in the suit property and that effect is required to be given in the final decree, to be drawn. However, here it is undisputed that the plaintiffs and defendant no. 2 Vijaya, have not independently assailed the said judgment and order; nor any cross-objection has been filed. Therefore, it would appear that plaintiffs and defendant no. 2 Vijaya have all accepted the impugned judgment and order. Therefore, plaintiffs and defendant Vijaya, now cannot claim respite under the ruling of **Ganduri** (supra).

53. It is also pertinent that Defendant Kundalik's defence has been struck off, vide order dated 02/11/2017, passed below Exh. 1, by the Ld. Trial Court. Said order has not been disputed, challenged or got set-aside by defendant no. 1 Kundalik. Defendant Kundalik's defence has been struck off as he has not complied with the Ld. Trial Court's order dated 03/09/2004, passed below Exh. 16, directing maintenance to his mother being plaintiff no. 1

Anjanabai. No doubt some feeble attempt is made to show that Kundalik has made payments to his mother Anjanabai, towards monthly maintenance, however the said documents perused would reveal it to be payments been made in compliance of order passed in Cri. Misc. Appl. no. 114/2014, but not in due compliance of order dated 03/09/2004, passed below Exh. 16, in present original suit proceedings. In view of the fact that Defendant Kundalik willfully neglected the Ld. Trial Court's order dated 03/09/2004, passed below Exh. 16, in present original suit proceedings, therefore only his defence was struck off. Defendant Kundalik, even did not bother to make application before the Ld. Trial Court seeking the setting aside any of the order dated 03/09/2004, passed below Exh. 16 or order dated 02/11/2017 passed below Exh. 1, nor did he assail any of those orders in challenge and even did comply the said order passed below Exh. 16. In such circumstances defendant Kundalik cannot claim to have been ignored or prohibited from laying his defence or contesting the suit or been avoided a fair and reasonable opportunity. Therefore, **Filip Tiago DeGama (supra)**, shall be of no avail to the contesting defendants. Therefore, any payment made by defendant Kundalik to his mother Anjanabai, shall be of no avail, to adjust those payments under order passed below Exh. 16 in present suit proceedings. In view of the fact that defendant Kundalik has ignored to pay maintenance, to his mother Anjanabai, therefore, Anjanabai shall not only be entitled to share in the suit properties, but shall also have 'Charge' thereupon. Thus, plaintiffs and defendant no. 2 Vijaya, shall be entitled to share and partition of the suit property and the points for consideration are answered accordingly.

As to Point no 6. :-

54. In attempt to justify the sale of part of suit property, contesting defendant Kundalik has come up with case that the sale was done for legal necessity. Kundalik claims in his written statement that he got his sisters' marriage solemnized and for that purpose he had to time and again procure loans and also repaid it. Defendant Kundalik also contended that since the year 1971 till the year 1991, suit property was under occupation of plaintiff no. 4 Keshar Dagdu Tribhuvan's husband Dagdu Bhikaji Tribhuvan, by way of mortgage, for amount of Rs. 3,000/- and that plaintiff no. 4's husband Dagdu Tribhuvan was cultivating said lands and deriving benefits incomes therefrom for twenty years. Defendant Kundalik also contended that he paid amount of Rs. 30,000/-, in the year 1991, to plaintiff no. 4 Keshar's husband Dagdu Tribhuvan and got back the suit properties.

55. However, it would be pertinent that there is no iota of evidence led by defendant Kundalik on this aspect, except bald assertions. It is also pertinent that there is nothing on record to ascertain that defendant Kundalik is the eldest amongst the brother and sisters, to have taken upon himself the responsibilities of getting his sisters married away. It would also be pertinent that, date of marriage of any of the sisters is not brought on record to prove that such marriage was solemnized after father Kacharu's death on 08/12/1990. Further, no such suggestion was put forth the plaintiff witness Keshar Dagdu Tribhuvan, in her cross-examination at the behest of other contesting co-defendant 'Saikrupa Buildwell'. Even there is no evidence of any of the persons or institutions from whom defendant Kundalik procured any loan.

Therefore, contentions that defendant Kundalik had to procure loans for family purpose and had to repay it are not proved at all and safely be considered to be false contentions, made merely for namesake.

56. Even no suggestion was put forth to plaintiff witness Keshar that suit properties were ever mortgaged to her husband Dagdu, since the year 1971 for amount of Rs. 3,000/- and that defendant Kundalik redeemed it by paying amount of Rs. 30,000/- in the year 1991. Moreover, no attempt was made by the contesting defendants to examine Dagdu Tribhuvan to prove the defence contention that suit properties were mortgaged to him i.e Dagdu and that defendant Kundalik paid Rs. 30,000/- and got it released back. Even no other independent person is attempted by the contesting defendants to examine any independent witness, even to atleast prove that the suit lands were been cultivated by Keshar's husband Dagdu since the year 1971 till 1991. Therefore, it appears that the assertions about the suit property been mortgaged to plaintiff no. 4 Keshar's husband Dagdu and that defendant Kundalik paid Rs. 30,000/- to get it released, are also not proved at all. Said contentions of suit property been mortgaged to Dagdu in the year 1971 and were released back by defendant in the year 1991, appear to be doubtful also for the reason that Kundalik's father Kacharu died on 08/12/1990, therefore if such a mortgage transaction was done, then that was done within the life time of father Kacharu, rather about 19 years before his death; but surprisingly, defendant Kundalik gets that property released immediately within a year of his father's death. It becomes inconceivable that the mortgaged property, which the father Kacharu did not get released back for 19

years could be got released back by Kundalik, within a year of his father's death, doubt arises, is how. The said doubt remains to be clarified by the contesting defendants. Therefore, defence contentions of suit property been mortgaged and got released by Kundalik also does not proved at all.

57. The mortgage release defence also cannot be acceptable for the reason that plaintiff witness Keshar has admitted the suggestion that due to domestic reasons, Kundalik had to sell his house. Keshar further stated that the said house was sold about twenty years back. Keshar's said evidence was recorded on 07/09/2017; therefore, Kundalik has sold his house in the year 1997 or thereabout. It again becomes inconceivable that defendant Kundalik would be so affluent in the year 1991, that he would get back released the 20 years old mortgaged property, which his father could not get back for 19 years; and within next six years Kundalik would get into such a financial distress that he requires to sell away his house. Therefore, also the mortgage redemption defence also does not sustain.

58. Defendant Kundalik also contended in his written statement that he had to time and again procure loan for family necessities and had to personally repay it. Nonetheless, defendant no. 1 Kundalik has not bothered to adduce any documentary or oral evidence of any witness, to prove that he had borrowed any loans for family necessity and further that he personally paid it. No evidence is adduced by Kundalik as to for which necessity of the family, he had to borrow money, no borrower, no witness is examined; no related document is proved in evidence, by him.

Consequently, it also does not get proved that Kundalik spent any money for any legal necessity or benefit of the family. Therefore, defence contentions that Kundalik had spent monies or procured loans or repaid any loan, for legal or even otherwise necessity of the family or for family's benefit, does not get proved at all.

59. Defence contentions that Kundalik had spent monies for family necessity also cannot be acceptable for the reason that plaintiff witness Keshar has answered in her cross-examination that their mother plaintiff no. 1 Anjanabai is now residing with her daughters and that they are taking her care. There has been no rebuttal evidence on that account. Thus, it gets proved that Kundalik has even not been taking care of his age-old mother and she has to stay at mercy of her daughters.

60. It would also be pertinent that it is undisputed fact that plaintiff Anjanabai, being Kundalik's mother had to file a Criminal Misc. Application no. 114/2014, under which defendant Kundalik, has been directed to pay monthly maintenance of Rs. 400/- to Anjanabai. It goes without saying that if at all, Kundalik would have taken care of her mother Anjanabai and would have looked after her, she would not have required to knock the doors of the court seeking maintenance amount for her existence. Therefore, defendant Kundalik's contention that he spends amount for family necessity or for family benefits, do not stand with his conduct.

61. It would also be pertinent that, in the present original suit proceedings also, mother Anjanabai prefers an application Exh. 16 seeking maintenance, from Kundalik. Kundalik had filed his

reply thereto at Exh. 18, in which he claims to be suffering from blood-pressure ailment and thrice had to undergo surgeries, regularly remains unwell, got family, no rains, no water in well, drought situation, therefore unable to pay interim maintenance to her mother. Such reasons forwarded to avoid maintenance to mother, be that so, but even after order 03/09/2004, awarding maintenance to plaintiff Anjanabai, defendant Kundalik has avoided and defaulted to comply said orders. It is for such default on part of Kundalik that Ld. Trial Court vide its order dated 02/11/2017, had struck off Kundalik's defence, in the original suit proceedings. Defendant Kundalik has not even bothered to make any maintenance payment to his mother and get such adverse orders, set-aside. An attempt is made to show that Kundalik has made maintenance payment to his mother Anjanabai. However, perusal of said documents would reveal that whatever those payments were made, the same were under compliance of orders passed under Cri. Misc. Appl. No. 114/2014, and not under order passed in present suit proceedings, therefore said documents shall be of no avail to the contesting defendants, in present proceedings. Therefore, it gets proved that defendant Kundalik's conduct is against his pleadings and he never bothered to maintain his mother. In such circumstances, it is hard to accept that defendant Kundalik would spend any money on family necessity/ies.

62. Further, there is no iota of evidence adduced by contesting defendants that as to which necessity of the family, defendant Kundalik had to enter into sale transaction with defendant nos. 3 to 3B being 'Saikrupa Buildwell Pvt. Ltd.', 'Navinal Ratra' and 'Rahul Kalsi'. Therefore, it also does not get proved at all

that there was any necessity of the family forcing Kundalik to enter into such a sale transaction. In such circumstances, such a sale transaction cannot bind the plaintiffs and defendant no. 2 Vijaya. Thus, said point is answered accordingly.

As to point no. 7 :-

63. It is also contended on behalf of contesting defendants 3 and 3B being 'Saikrupa Buildwell Pvt. Ltd. and Rahul Kalsi', did not have knowledge about the plaintiffs' name in the 7/12 extracts, so also did not have knowledge of the present pending suit. It is submitted that thus these defendant nos. 3 to 3B are bonafide purchaser, without notice. Further contended that, as these defendants are Bonafide purchasers therefore, the sale transaction cannot be adversely affected, and shall be binding on all concerned. It is submitted that the sale transaction being for valid consideration and with requisite permissions, cannot be set-aside.

64. In this regard, it would be pertinent that defendant no. 3 Saikrupa Buildwell Pvt. Ltd., is a registered company under the Companies Act, 1956 and is having its registered office at New-Delhi; defendant nos. 3A and Navinal Ratra and Rahul Kalsi, being its Directors. Very fact that these contesting defendants are a Company and its Directors, but naturally, they are equipped with requisite legal knowledge about the precautions to be ensured before entering into a transaction in crores of rupees. Mere claiming to be a 'bonafide purchaser for valid consideration', would not suffice, rather said contention is to be proved with cogent evidence. Defence raised that these defendants did not have any knowledge about the other litigants' name to be in 7/12 extracts, would go to

show these contesting defendants' admission that they have been to casual and careless in executing this sale transaction. It appears that no precaution was taken, no proper search was taken, to find out about any other persons whether interested in the property they transacted. There is nothing borne in evidence or brought on record about any public notice issued inviting objections as to title, before entering into the transaction. No such notice is placed on record, no search report is placed on record. A company entering into transaction involving huge sale consideration, is expected to be precautionous and to take up all legal and necessary compliances, to avoid any future complications; but that seems not done. Thus, it appears that these contesting defendants have not entered the transaction with any due-diligence. These contesting defendants' bonafides are not proved in evidence; nor there is any material on record or evidence to consider the sale transaction to be bonafide one. Mere entering into a transaction for consideration would not suffice to contend of being a 'bonafide purchasers for valid consideration'. Therefore, contentions that these defendants, 'Saikrupa Buildwell Pvt. Ltd., Navinal Ratra and Rahul Kalsi', are Bonafide purchasers cannot be much acceptable.

65. It is also contended on behalf of contesting defendants 3 to 3B being Saikrupa Buildwell Pvt. Ltd., Navinal Ratra and 'Rahul Kalsi' that they are the actual victims of this entire suit proceedings. It is contended that plaintiff witness Keshar also admitted that they are on visiting terms with contesting co-defendant Kundalik, therefore plaintiffs are in collusion with the defendant Kundalik Pawar, and this is a collusive suit, to avoid defendants Saikrupa Buildwell Pvt. Ltd., have possession of their purchased property.

66. As far as, contending the present suit to be collusive suit and these defendants to be defrauded victim, is concerned, the fact that sale transaction was entered pendente-lite cannot be disputed. In view of the fact that suit is too prior to the disputed sale transaction, therefore, it definitely cannot be said that a collusive suit was instituted. Moreover, if at all defendant Kundalik would be in collision with his mother and sister, then he would not have preferred the instant appeal. Therefore, contentions of these proceedings being collusive, between Kundalik and his mother and sisters cannot be much acceptable.

67. Moreover, if at all these proceedings are collusive, as contended that agitating defendants 'Saikrupa Buildwell' ought to bring on records as to what steps are taken by them. There ought to be on records if at all any separate proceeding file by Saikrupa. Infact, Saikrupa group did not even prefer any independent appeal against the judgment and order impugned herein. If defendant Kundalik is in collusion with his mother and sisters, then why not did Saikrupa group prefer an independent appeal. The fact that Saikrupa group does not file a separate appeal, but would ride on the appeal of co-defendant Kundalik and would argued against plaintiffs would go to show that Saikrupa group supports the contentions of defendant Kundalik. Thus, by very position adopted by Saikrupa group, in the appeal proceedings, no collusion can be seen between Kundalik with his mother and sisters. Therefore, for the reasons that nothing appears about there being collusion between Kundalik with his mother and sisters coupled with the fact that nothing is borne on record to demonstrate about being a Bonafide-purchasers, Saikrupa group cannot be considered to be

defrauded, atleast by the plaintiffs and defendant Vijaya. Therefore, said sale transaction entered between defendant Kundalik and Saikrupa Buildwell group shall not be binding upon the plaintiffs and defendant Vijaya.

68. If at all, any facts were concealed by Kundalik before entering into sale transaction, then the purchasers but naturally, can have recourse against their vendor, as available in law; but not at the peril of the plaintiffs and defendant Vijaya. Therefore, for the said reasons 3 to 3B, would not be entitled for any costs, compensatory or otherwise. Thus, said point is answered accordingly.

As to point nos. 8 and 9 :-

69. It would be pertinent that defendant no. 1 Kundalik Pawar's defence has been struck down, for non-compliance of order passed under application Exh. 16 in the suit proceedings. No attempt has been made by defendant Kundalik to set it aside by complying Exh. 16. Therefore, such demeanour of defendant Kundalik would be a contemptuous conduct; least is in utter disregard to a Court order and is a aghast situation that inspite of court orders, does not even bother to pay monthly maintenance of Rs. 400/-, awarded under Exh. 16 vide order dated 03/09/2004, in present original suit proceedings, therefore his defence was struck down, vide order dated 02/11/2017. Defendant Kundalik even did not bother to seek the setting aside, of the said defence striking-off order dated 02/11/2017. This would also demonstrate the callous attitude of defendant Kundalik, towards the court proceedings. It would also mean that he has given up the suit proceedings;

therefore, now nothing remains for him to appeal. Rather, once defence has been struck down in the original suit proceedings, nothing remains in the mouth of defendant Kundalik to agitate as an appellant.

70. Thus, for the reasons aforesaid, it appears that the nothing is made out by the appellant Kundalik Pawar or even respondent 'Saikrupa Buildwell Pvt. Ltd., Navinal Ratra and Rahul Kalsi', to dispute the legality, proprietary and correctness of the impugned judgment and order. So, it appears that the impugned judgment and order does not warrant any interference, in this appeal. Thus, points under reference are answered accordingly and following order is passed.

ORDER

1. Appeal hereby stands dismissed.
2. Inform the Ld. Trial Court accordingly and return the original Records and Proceedings, to the Trial Court.
3. Decree be draw accordingly.

Dictated and pronounced in open Court.

Date : 20/02/2025.

(Y. H. Ameta)
District Judge -1, Rahata.