

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

APPEAL FROM ORDER NO.15 OF 2021

 Umaji s/o Satwaji Shep (Died) by L.Rs.

1/1] Limbabai w/o Umaji Shep,

Age -- Years, Occu.: Nil,

R/o.: Shepwadi, Tq. Ambajogai,

District: Beed(died)

1/2] Bhagwat s/o Umaji Shep,

Age: 66 years, Occu.: Agril.,

R/o.: As above.

1/3] Vasant s/o Umaji Shep,

Age: 64 years, Occu.: Agril.,

R/o.: As above.

1/4] Vishnu s/o Umaji Shep,

Age: 62 years, Occu.: Agril.,

R/o.: Shepwadi, Tq. Ambajogai,

District: Beed.

1/5] Siminta w/o Panditrao Tidke,

Age: 60 years, Occu.: Household,

R/o.: Behind Sapna Hotel, Parali-V,

Tq. Parali-V., District: Beed.

1/6] Dilip @ Bhandu s/o Umaji Shep,

Age: 58 years, Occu.: Agril.,

R/o.: Shepwadi, Tq. Ambajogai,

District: Beed.

1/7] Devidas s/o Umaji Shep,

Age: 56 years, Occu.: Agril.,

R/o.: As above.

1/8] Sambhaji s/o Umaji Shep,

Age: 54 years, Occu.: Service,

R/o.: As above.



1/9] Lata w/o Eknath Nagargoje,

Age: 52 years, Occu.: Household, R/o.: Near Annabhau Sathe Chowk, Ambajogai, Tq. Ambajogai,

District: Beed.

- 2] Madhavrao s/o Satwaji Shep, (Died) by L.Rs.
- 2-A] Madhukar s/o Madhavrao Shep, Age: 63 years, Occu.: Agril., R/o.: Shepwadi, Tq. Ambajogai, District: Beed.
- 2-B] Ramdas s/o Madhavrao Shep, Age: 59 years, Occu.: Agril., R/o.: As above.
- 2-C] Shivdas s/o Madhavrao Shep, Age: 61 years, Occu.: Agril., R/o.: As above.
- 2-D] Bhaskar s/o Madhavrao Shep, Age: 57 years, Occu.: Agril., R/o.: As above.
- 2-E] Indubai w/o Madhavrao Shep, (Died)
- 2-F] Susheelabai w/o Shridhar Bade, Age: 55 years, Occu.: Household, R/o.: Chopanwadi, Tq. Ambajogai, District: Beed.
- 2-G] Kushabai w/o Madhukar Munde, Age: 66 years, Occu.: Household, R/o: Gajegaon, To, Parali V

R/o.: Gaiegaon, Tq. Parali V., District: Beed.

.... APPELLANTS
(Appellants / L.Rs. of Orig. Defts. No.3 & 4/3-1 to 3-9 & 4/A to 4-G)



VERSUS

- 1] Gulam Mohmood s/o Gulam Dastgir (Died) By L.Rs.
- 1/1] Shaikh Ayesha Begum w/o Gulam Mahemood,

Age: 70 years, Occu.: Household,

R/o.: Pensionpura, Ambajogai,

District: Beed.

1/2] Shaikh Mohammad Abdul Razvi, s/o Gulam Mahemood,

Age: 49 years, Occu.: Service,

R/o.: As above.

1/3] Shaikh Sofi s/o Gulam Mahemood,

Age: 42 years, Occu.: Business,

R/o.: As above.

1/4] Patel Shanez w/o Shafique Patel,

Age: 44 years, Occu.: Household,

R/o.: Kazi Mohalla, Latur,

Tq. and Dist. Latur.

1/5] Shaikh Mukhtar s/o Gulam Mahemood,

Age: 42 years, Occu.: Business,

R/o.: Pensionpura, Ambajogai,

District: Beed.

1/6] Shaikh M. A. Maroof s/o Gulam Mahemood

Age: 38 years, Occu.: Business,

R/o.: As above.

1/7] Shaikh M. A. Farooque s/o Gulam Mahemood,

Age: 35 years, Occu.: Business,

R/o.: As above.

1/8] Shaikh Shakila w/o Shaikh Sajjad,

Age: 29 years, Occu.: Household,

R/o.: Miskini Pura Latur,

Tq. & Dist. Latur.

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1/9] Shaikh Shaziya Jabeen d/o

Gulam Mahemood, Age: 28 years,

Occu.: Household, R/o.: As above.

1/10] Shaikh Sumiy d/o Gulam Mahemood,

Age: 26 years, Occu.: Household,

R/o.: As above. (Resp.No.1/1 to 1/10 L.Rs. or Orig. R.No.5)

- 2. Azeemunisa Begum w/o Razak Jaybee Saheb (Dies) L.Rs.
- 2-A] Yasmeen Begum w/o Khalequez Zaman,

Age Years, Occu.: Household,

R/o.: Ambajogai, Tq. Ambajogai,

District: Beed.

2-B] Javed Pasha s/o Abdul Razak,

Age years, Occu.: Agril., and Business,

R/o.: Hyderabad (Telangana) (R.No.2-A & 2-B

Orig.Plt. 1-A & 1-B)

- 3. Sayeda Begum w/o Mohd. Miskeen Saheb (Died) L.R.
- 3-A] Abdul Qayum s/o Mohammed Miskin,

Age: 30 years, Occu.: Business,

R/o.: Hyderabad (Telangana) (R.No.3-A

Orig. Plf. No.2-A)

4. Munawar Ali s/o Ahmed Ali, (Died) L.Rs.

4-A] Khairunisa w/o Munawar Ali,

Age: Major, Occu.: Household,

R/o.: Ambajogai, Tq. Ambajogai,

District: Beed.

4-B] Mujafar Ali s/o Munawar Ali,

Age: Major, Occu.: Business,

R/o.: As above.



4-C] Jabin Begum w/o Mohd. Afsar,

Age; 30 years, Occu.: Household,

R/o.: Aurangabad.

4-D] Mohammed Shakeel s/o Munawar Ali,

Age: Major, Occu.: Business, R/o.: Ambajogai, Tq. Ambajogai,

District: Beed. (Resp. Nos.4-A to 4-D Orig. Deft. No.1-A to 1-D)

- 5] Habeeb Ali s/o Ahmed Ali (Died) by L.Rs. (R.No.5 Orig.Deft.No.2)
- 5-A] Masudali s/o Habibali Shaikh, Age: 50 years, Occu.: Agril.,
- 5-B] Maksudali s/o Bahibali Shaikh, Age: 44 years, Occu.: Agril.,
- 5-C] Farakhudali s/o Habibali Shaikh, Age: 42 years, Occu.: Agril.,
- 5-D] Zubairali s/o Habibali Shaikh, Age: 32 years, Occu.: Agril.,
- 5-E] Tahesin Begum w/o Naimoddin Kazi, Age: 40 years, Occu.: Household, All R/o.: Barabhai Galli, Ambajogai, District: Beed.
- 5-F] Taslimbegam w/o Maksud Inamdar, Age: 38 years, Occu.: Household, R/o.: Roza Mohalla, Tq. Kaij, District Beed.
- 5-G] Tanveer Sultana w/o Shaikh Habibali, Age: 38 years, Occu.: Household, R/o.: Barabhai Galli, Ambajogai, District: Beed.
- 5-H) Shaikh Praveen Sultana w/o Mohammad Siddiqui, Age: 34 years, Occu.: Househld,

R/o.: Hyderabad (Telangana)



6] Mohd. Abdul Karim s/o Gulam Dastagir Saheb, Age: 35 years, Occu. & R/o.: As above.(R.No.6 Orig.Deft.No.6)

7] Abdul Rauf s/o Abdul Latif Saheb, Age: 30 years, Occu.: Agri., & business,

R/o.: As above.

8] Abdul Qdeer s/o Abdul Latif, Age: 25 years, Occu & R/o.: As above.

9] Abdul Majid s/o Abdul Latif, Age: 22 years, Occu.: Business,

R/o.: Barabhai Lane, Ambajogai,

District: Beed ... (Resp.Nos.7 to 9

Orig. Defts.No.7 to 9)

10] Mohmad Masood Ali s/o Mohmad Miskin (Died) Through his LRs.

10-1] Aayeshabegum w/o Mohd. Masood Ali, Age: 56 years, Occu.: Household,

R/o.: House No. 14-199, Wadi-E-Omer, Shaheen Nagar, Balapur, K. V. Rangareddy Telangana State.

10-2] Mohd. Abdul Waris s/o Mohd. Masood Ali, R/o.: As above.

10-3] Mohd. Abdul Naser s/o Mohd. Masood Ali,

Age; 30 years, Occu.: Business,

R/o.: As above.

11. Mohmad Yusuf s/o Mohmad Miskin,

Age: 51 years, Occu.: Business, R/o.: House No. 19-4-279-B-20, Nawab Sahab Iunta, Jahanuma, Hyderabad (Telangana State)

12. Mohmad Siddiq s/o Mohmd. Miskin,

Age: 41 years, Occu.: Business,

R/o.: House No. 20-6-342-3, Syed Ali, Chabutra, Hyderabad (Telangana State)



13. Ayesha Jabeen w/o Mohd. Inayath Ali,

D/o. Late Mohmad Miskin,

Age: 45 years, Occu.: Business,

R/o.: House No. 20-6-214-B

Shaha Ali Banda, Syed Ali Chabutra,

Hyderabad (Telangana State)

14. Samira Fatima d/o Late Mohmad Miskin,

Age: 26 years, Occu.: Business,

R/o.: 20-6-214, Gzai Banda, Syed Ali

Chabutra, Hyderabad (Telangana State)

15. Mohmad Magsood s/o Mohmad Miskin, ... (Resp.No.10 to 15

Age: 42 years, Occu.: Business, Orig. Deft.Nos.10

R/o.: House No. 23-5-67-3,

Sayed Ali Chabutra, Hyderabad

(Telangana State)

RESPONDENTS

to 15)

Mr. V. D. Sapkal, Senior Advocate i/b

Mr. M. K. Deshpande for appellants

Mr. Akash Gade, Advocate for Respondent Nos.1-A to 1-10 Mr. S.A.P. Quadri, Advocate for respondent No.3-A

Mr. J. H. Deshmukh, Advocate for Respondent Nos.4-A to 4-D

Mr. S. A. Sable, Advocate for Respondent Nos. 5-A to 5-H

WITH APPEAL FROM ORDER NO.16 OF 2021

- 1. Umaji s/o Satwaji Shep (Died) by L.Rs.
- 1/1] Limbabai w/o Umaji Shep,

Age -- Years, Occu.: Nil,

R/o.: Shepwadi, Tq. Ambajogai,

District: Beed(died)

1/2] Bhagwat s/o Umaji Shep,

Age: 66 years, Occu.: Agril.,

R/o.: As above.

1/3] Vasant s/o Umaji Shep,



Age: 64 years, Occu.: Agril.,

R/o.: As above.

1/4] Vishnu s/o Umaji Shep,

Age: 62 years, Occu.: Agril., R/o.: Shepwadi, Tq. Ambajogai,

District: Beed.

1/5] Siminta w/o Panditrao Tidke,

Age: 60 years, Occu.: Household, R/o.: Behind Sapna Hotel, Parali-V,

Tq. Parali-V., District: Beed.

1/6] Dilip @ Bhandu s/o Umaji Shep,

Age: 58 years, Occu.: Agril., R/o.: Shepwadi, Tq. Ambajogai,

District: Beed.

1/7] Devidas s/o Umaji Shep,

Age: 56 years, Occu.: Agril.,

R/o.: As above.

1/8] Sambhaji s/o Umaji Shep,

Age: 54 years, Occu.: Service,

R/o.: As above.

1/9] Lata w/o Eknath Nagargoje,

Age: 52 years, Occu.: Household, R/o.: Near Annabhau Sathe Chowk, Ambajogai, Tq. Ambajogai,

District: Beed.

2] Madhavrao s/o Satwaji Shep, (Died) by L.Rs.

2-A] Madhukar s/o Madhavrao Shep,

Age: 63 years, Occu.: Agril.,

R/o.: Shepwadi, Tq. Ambajogai,

District: Beed.

2-B] Ramdas s/o Madhavrao Shep,

Age: 59 years, Occu.: Agril.,

R/o.: As above.



2-C] Shivdas s/o Madhavrao Shep,

Age: 61 years, Occu.: Agril.,

R/o.: As above.

2-D] Bhaskar s/o Madhavrao Shep,

Age: 57 years, Occu.: Agril.,

R/o.: As above.

2-E] Indubai w/o Madhavrao Shep,

(Died)

2-F] Susheelabai w/o Shridhar Bade,

Age: 55 years, Occu.: Household,

R/o.: Chopanwadi, Tq. Ambajogai,

District: Beed.

2-G| Kushabai w/o Madhukar Munde,

Age: 66 years, Occu.: Household,

R/o.: Gaiegaon, Tq. Parali V.,

District: Beed. APPELLANTS

(Appellants / L.Rs. of Orig.

Defts. No.3 & 4/3-1 to 3-9

& 4/A to 4-G)

VERSUS

1] Azeemunisa Begum w/o Razak Jaybee Saheb (Dies) L.Rs.

1-A] Yasmeen Begum w/o Khalequez Zaman,

Age 55 Years, Occu.: Household,

R/o.: Ambajogai, Tq. Ambajogai,

District: Beed.

1-B] Javed Pasha s/o Abdul Razak,

Age 48 years, Occu.: Agril., and Business,

R/o.: Hyderabad (Telangana) (R.No.1-A & 1-B

Orig.Plt. 1-A & 1-B)

2. Sayeda Begum w/o Mohd. Miskeen Saheb (Died) L.R.

2-A] Abdul Qayum s/o Mohammed Miskin,

Age: 30 years, Occu.: Business,

R/o.: Hyderabad (Telangana) (R.No.2-A

Orig. Plf. No.2-A)

3. Munawwar Ali s/o Ahmed Ali, (Died) L.Rs.

3-A Khairunisa w/o Munawar Ali,

Age: Major, Occu.: Household, R/o.: Ambajogai, Tq. Ambajogai,

District: Beed.

3-B] Mujafar Ali s/o Munawar Ali,

Age: Major, Occu.: Business,

R/o.: As above.

3-C] Jabin Begum w/o Mohd. Afsar,

Age; 30 years, Occu.: Household,

R/o.: Aurangabad.

3-D] Mohammed Shakeel s/o Munawar Ali,

Age: Major, Occu.: Business,

R/o.: Ambajogai, Tq. Ambajogai,

District: Beed. (Resp. Nos.3-A to 3-D Orig. Deft. No.1-A to 1-D)

4] Habeeb Ali s/o Ahmed Ali (Died) by L.Rs.

.... (R.No.4 Orig.Deft.No.2)

4-A] Masudali s/o Habibali Shaikh,

Age: 50 years, Occu.: Agril.,

4-B] Maksudali s/o Bahibali Shaikh, Age: 44 years, Occu.: Agril.,

4-C] Farakhudali s/o Habibali Shaikh,

Age: 42 years, Occu.: Agril.,

4-D] Zubairali s/o Habibali Shaikh,

Age: 32 years, Occu.: Agril.,

4-E] Tahesin Begum w/o Naimoddin Kazi,

Age: 40 years, Occu.: Household, All R/o.: Barabhai Galli, Ambajogai,

District: Beed.

4-F] Taslimbegam w/o Maksud Inamdar,

Age: 38 years, Occu.: Household,

R/o.: Roza Mohalla, Tq. Kaij,

District Beed.

4-G] Tanveer Sultana w/o Shaikh Habibali,

Age: 38 years, Occu.: Household,

R/o.: Barabhai Galli, Ambajogai,

District: Beed.

4-H) Shaikh Praveen Sultana w/o Mohammad Siddiqui,

Age: 34 years, Occu.: Househld,

R/o.: Hyderabad (Telangana)

5] Mohd. Abdul Karim s/o Gulam Dastagir Saheb,

Age: 35 years, Occu. & R/o.: As above.

.....(R.No.5 Orig.Deft.No.6)

6] Abdul Rauf s/o Abdul Latif Saheb,

Age: 30 years, Occu.: Agri., & business,

R/o.: As above.

7] Abdul Qdeer s/o Abdul Latif,

Age: 25 years, Occu & R/o.: As above.

8] Abdul Majid s/o Abdul Latif,

Age: 22 years, Occu.: Business,

R/o.: Barabhai Lane, Ambajogai,

District: Beed ... (Resp.Nos.6 to 8

Orig. Defts.No.7 to 9)

9] Mohmad Masood Ali s/o Mohmad Miskin (Died) Through his LRs.

9-1] Aayeshabegum w/o Mohd. Masood Ali,

Age: 56 years, Occu.: Household,

R/o.: House No. 14-199, Wadi-E-Omer,

Shaheen Nagar, Balapur, K. V. Rangareddy

Telangana State.



- 9-2] Mohd. Abdul Waris s/o Mohd. Masood Ali, R/o.: As above.
- 9-3] Mohd. Abdul Naser s/o Mohd. Masood Ali,

Age; 30 years, Occu.: Business,

R/o.: As above.

10. Mohmad Yusuf s/o Mohmad Miskin,

Age: 51 years, Occu.: Business,

R/o.: House No. 19-4-279-B-20,

Nawab Sahab Iunta, Jahanuma,

Hyderabad (Telangana State)

11. Mohmad Siddig s/o Mohmd. Miskin,

Age: 41 years, Occu.: Business,

R/o.: House No. 20-6-342-3, Syed Ali,

Chabutra, Hyderabad (Telangana State)

12. Ayesha Jabeen w/o Mohd. Inayath Ali,

D/o. Late Mohmad Miskin,

Age: 45 years, Occu.: Business,

R/o.: House No. 20-6-214-B

Shaha Ali Banda, Syed Ali Chabutra,

Hyderabad (Telangana State)

13. Samira Fatima d/o Late Mohmad Miskin,

Age: 26 years, Occu.: Business,

R/o.: 20-6-214, Gzai Banda, Syed Ali

Chabutra, Hyderabad (Telangana State)

14. Mohmad Maqsood s/o Mohmad Miskin, ... (Resp.No.9 to 14

Age: 42 years, Occu.: Business,

Orig. Deft.Nos.10

R/o.: House No. 23-5-67-3,

to 15)

Sayed Ali Chabutra, Hyderabad

(Telangana State)

.. RESPONDENTS

.

Mr. V. D. Sapkal, Senior Advocate i/b Mr. M. K. Deshpande for Appellants

Mr. S. A. Sable, Advocate for Respondent Nos.4-A to 4-H.

Mr. J. H. Deshmukh, Advocate for Respondent Nos.3-A to 3-D

Mr. S. A.P. Quadri, Advocate for Respondent Nos.2-A



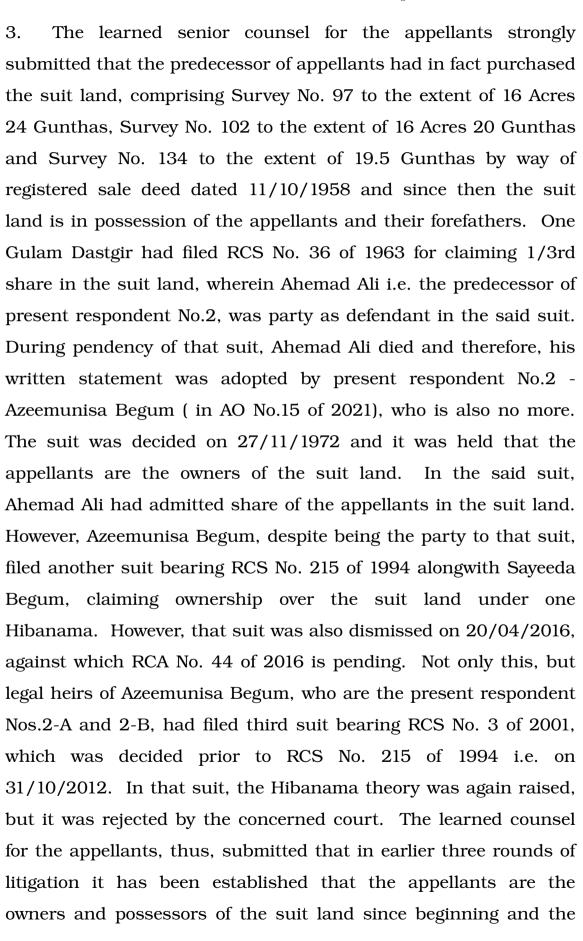
RESERVED ON : 08/09/2022 PRONOUNCED ON : 21/10/2022

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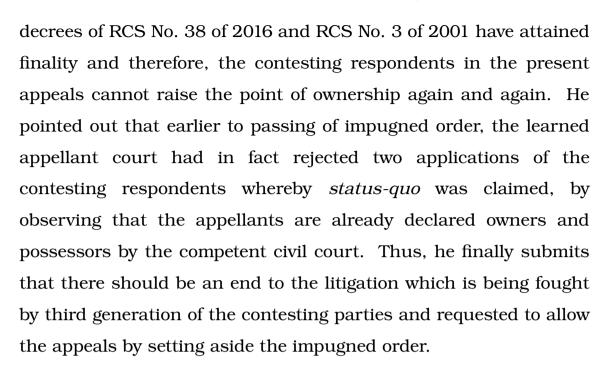
JUDGMENT:

1. The appellants in both these appeals, who are original respondent Nos.3/1 to 3/9 and 4/A to 4/G, have challenged the common order dated 15/01/2021 passed by the learned District Judge-2, Ambajogai (hereinafter referred to as 'the learned appellate court') below Exhibits-34, 40, 44 and 80 in RCA No. 44 of 2016. The application Exhibits-40 & 80 in RCA No. 44 of 2016 were filed by present respondent Nos.1/1 to 1/10, who are respondent Nos. 5/1 to 5/10 in RCA No. 44 of 2016, where as application Exhibits-34 and 44 in RCA No. 44 of 2016 were filed by present respondent Nos.1-A and 2-A. Under the impugned order, the learned appellate court has allowed all the applications Exhibits-34, 40, 44 and 80 and thereby restrained the present appellants from alienating the suit lands and for creating any third party interest in the same till final disposal of the appeal.

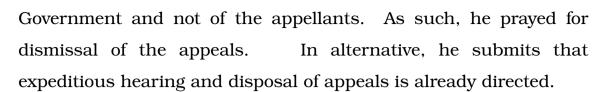
2. On perusal of the impugned order, it appears that the learned appellate court by relying upon certain photographs in respect of display of board named as 'Satwaji Nagar' on the suit property, came to conclusion that the present appellants were trying to create third party interest in the suit land by developing the same into plots and it would create complications and addition of many parties if those plots are sold.



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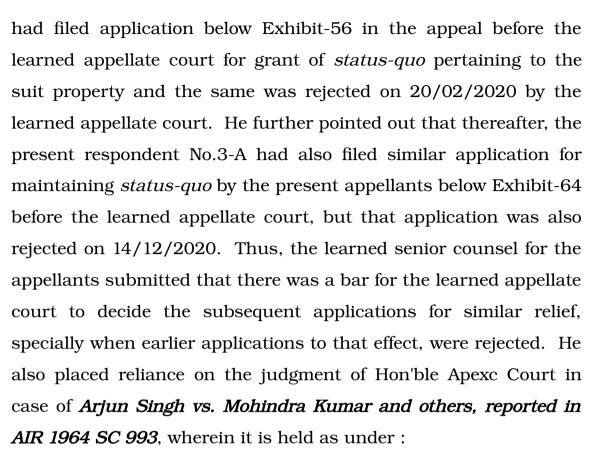


4. On the contrary, the learned counsel for the contesting respondent Nos. 2-A and 3-A, who are the legal heirs of Azeemunisa Begum and Sayeeda Begum i.e. original respondent Nos.2 & 3, strongly opposed the submissions made on behalf of the appellants. He pointed out that earlier applications for statusquo filed by the contesting respondents, were not decided on merits but those were rejected being unattended. He submits that if the impugned order is set aside, then the appellants will definitely sell the suit land, which will give rise to more and may defeat right of present contesting complications respondents. He also pointed out as to how the sale deed dated 11/10/1958 executed in favour of predecessor of the appellants, was void-abinitio. He further submits that principle of res judicata is not at all applicable to the applications for claiming stay to the alienation as every such application can be made on fresh cause of action and by considering the change in circumstances. He pointed out that the suit land was in fact in possession of the



- 5. On the other hand, the learned counsel for respondent Nos.3-A to 3-D in A.O. No. 16 of 2021 submitted that an appropriate order might be passed.
- 6. With the assistance of the learned counsel for rival parties, I have gone through the entire documents produced by the rival parties on record alongwith the impugned order. The respective learned counsel for the contesting parties have also relied on certain judgments, which I would like to discuss at appropriate stage hereinafter.
- 7. On going through the impugned order in both these appeals, which is commonly passed by the learned appellate court below Exhibits-34, 40, 44 and 80, it is evident that present respondent Nos.2-A to 2-B and 3 as well as the legal representatives of 1/1 to 1/10 have filed these applications restraining the present appellants, who are the legal heirs of Umaji Satwaji Shep and Madhavrao Satwaji Shep, from creating third party rights over the suit land and alienating the same till final disposal of the appeal. The learned senior counsel for the appellants vehemently submitted that despite there was bar under the principle of *resjudicata* the learned appellate court decided all these applications for seeking temporary injunction in favour of the original appellants and legal representatives of original respondent No.5 in the appeal. He pointed out that earlier also respondent No.2-A

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" Scope of the principle of res judicata is not confined to what is contained in Section 11 but is of more general application. Again, res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits. If the Court which rendered the first decision was competent to entertain the suit or other proceeding, and had therefore, competency to decide the issue or matter, the circumstance that it is a tribunal of exclusive jurisdiction or one from whose decision no appeal lay would not by themselves negative the finding on the issue by it being res judicata in later proceedings. Where the principle of res judicata is invoked in the case of the different stages of proceedings in the same suit, the nature of the proceedings, the scope of the enquiry which the adjectival law provides for the decision being reached, as well as the specific provisions made on matters touching such decision are some of the

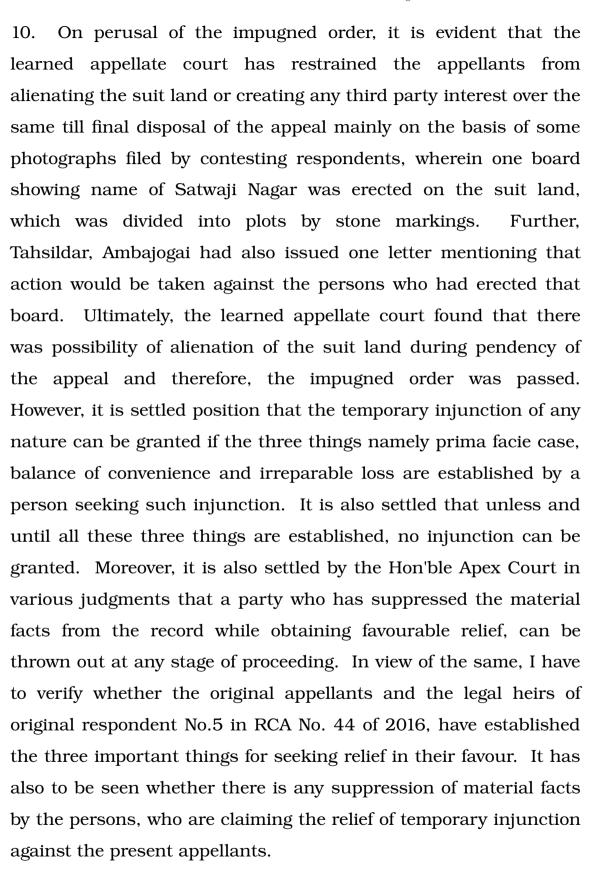


8. On the contrary, the learned counsel for the contesting respondents in the present appeals strongly opposed the submissions made on behalf of the appellants in respect of bar under the principle of *res-judicata*.

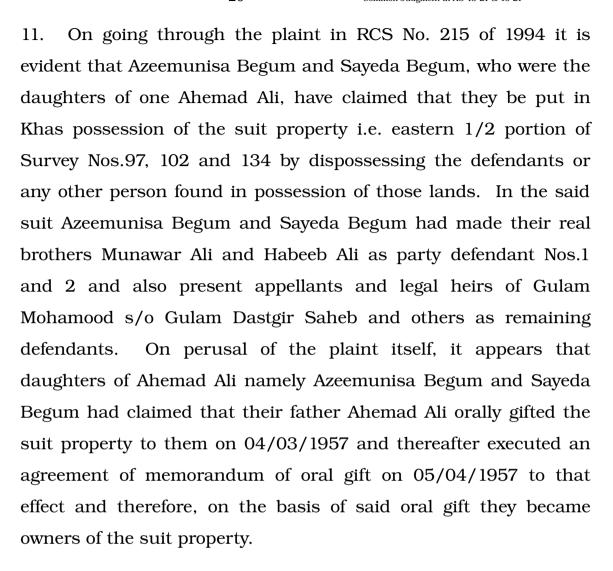
before the principle is held applicable".

9. Admittedly, as per the observations of the Hon'ble Apex Court, the principle of res-judicata is not confined to what is contained in Section 11 of the CPC but it also applies to the different stages of the same proceedings. The learned senior counsel for the appellants is relying on the rejection of similar applications claiming status-quo against the appellants. However, on going through the orders below those applications at Exhibits-56 and 64 it is evident that those applications were filed only to get restraining order till decision of applications below Exhibits-34 and 44, which are now decided under the impugned order in this appeal. The learned appellate court has specifically observed in the orders passed on the application below Exhibits-56 & 64 that the then pending applications for restraining relief, were to be decided on merit and therefore, he was not inclined to grant relief of status-quo in those applications. As such, nothing was decided on merit by the learned appellate court while rejecting the applications below Exhibits-56 & 64. As such, there cannot be any bar for the learned appellate court for deciding the applications for grant of temporary injunction by way of the impugned order subsequently.

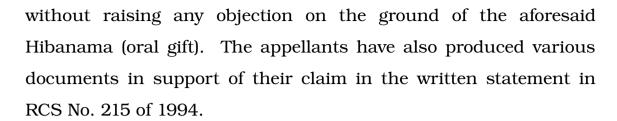
JUDICATURE



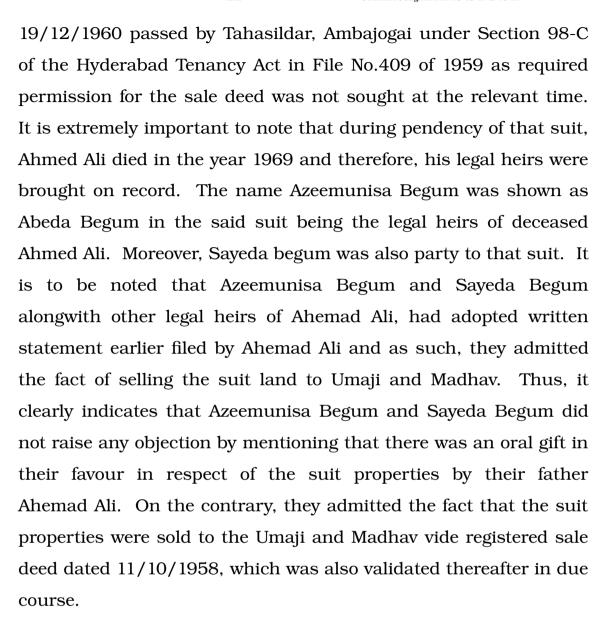
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12. On the contrary, the present appellants had resisted the suit by filing written statement mentioning that they had in fact purchased the suit property from father of Azeemunisa Begum and Sayeda Begum by way of a registered sale deed dated 11/10/1958 through their predecessor Umaji and Madhav for consideration of Rs.3,000/- alongwith proportionate share in well and four mango trees. They contended that the present original respondent Gulam Dastgir s/o Abdul Quadar had filed suit bearing RCS No. 36 of 1963, wherein deceased Ahemad Ali during his life time had admitted the fact of the aforesaid sale deed and after that Azeemunisa Begum and Sayeda Begum also admitted the same

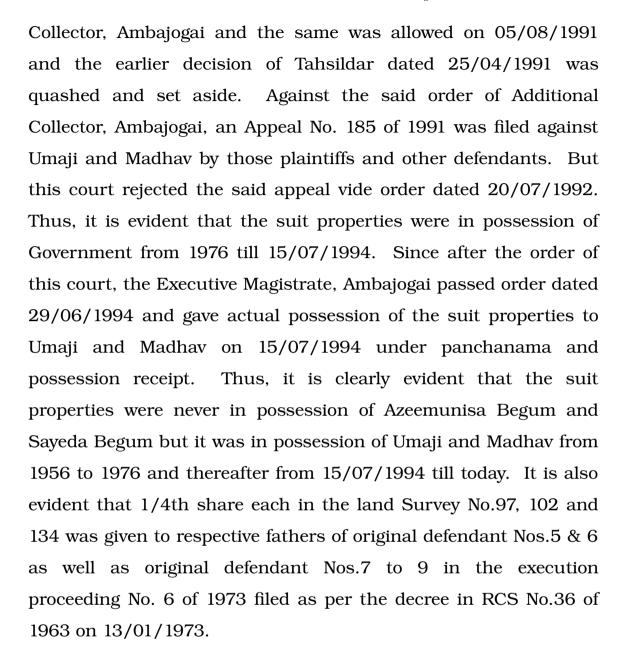


13. The judgment in RCS No. 36 of 1963 indicates that there were three shares in lands bearing Survey Nos. 97, 102 and 134, situated at village Shepwadi. One Gulam Mohmood Gulam Dastgir and Gulab Gaus Abdul Quadar were having share to the extent of 25% each and one Ahmed Ali Mohmad Munawar Ali, who was father of Azeemunisa Begum and Sayeda Begum, was having eastern side half share. The predecessor of appellants by name Satwaji was possessing those entire lands since prior to 1956. However, in the year 1958 Ahmed Ali sold his half share in those lands towards eastern side, that means the suit properties to original defendant Nos.3 & 4 i.e. Umaji Satwaji Shep and Madhavrao Satwaji Shep by way of registered sale deed dated 11/10/1958. However, thereafter as per the provisions of Hyderabad Tenancy Act, 1950 under Section 98-C, Umaji and Madhavrao paid the required fine and validated earlier sale deed on 19/12/1960. Therefore, since 1958, Umaji and Madhavrao were in possession of the suit properties. However, Gulam Dastgir thereafter filed RCS No. 36 of 1963 against Umaji and Madhav and others for partition and separate possession of his 1/4 share towards western side in the aforesaid lands. The record further shows that Ahemad Ali who was party to that suit, had filed written statement in the said suit and thereby agreed that he had sold the suit property to Umaji and Madhav by way of registered sale deed, which was validated thereafter under the order dated JUDICATURE



14. It further reveals that though Umaji and Madhav were in possession of the suit properties since 1958 but the plaintiffs and other defendants in RCS No. 36 of 1963 lodged false proceeding under Section 145 of Cr.P.C. to deprive Umaji and Madhav of the suit lands. Those persons by joining hands with concerned authorities, caused the suit lands to be forfeited by Government as per the order dated 25/04/1991 passed by concerned Taluka Magistrate. However, Umaji and Madhav had challenged the said decision by filing Revision No. 40 of 1991 before Additional

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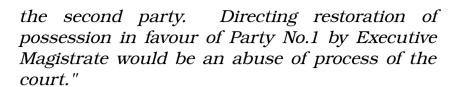


- 15. It is extremely important to note that this court in Criminal Writ Petition No. 410 of 1997 filed by legal heirs of Gulam Dastgir and Habeeb Ali i.e. son of Ahmed Ali, has made following observations:
 - 10. At this juncture, I would like to mention that the second party had claimed actual possession of the landed property in Regular Civil Suit No. 272 of 1973 and the competent civil court granted this relief in favour of the second party. In view



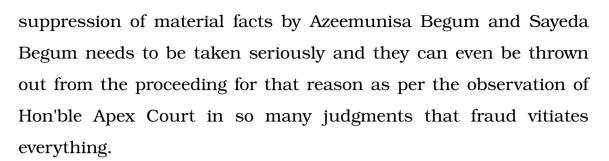
of this position, the party No.1 cannot claim possession of the disputed lands. Certain orders were passed by the Executive Magistrate in the past because that time, circumstances justified to take action under section 145 Criminal Procedure Code. But after finalization of proprietary rights in favour of the second party, the position becomes different. It is the second party who has got legal right to possess the disputed lands. Under the circumstance, it cannot be said that the Executive Magistrate should restore the disputed lands to party No.1 on the ground that the question of title or ownership is unknown to the proceedings under Section 145 Criminal Procedure Code.

- 11. The cases relied upon by Shri Khader, learned counsel can very well be distinguished on facts. The cases relied upon by Shri Khader, learned counsel, do not come to the rescue of Party No.1. It is true that on the background of pendency of civil litigation for possession, the Executive Magistrate should not have initiated a parallel criminal proceeding under Section 145 Criminal Procedure Code. In the civil court, the parties were in a position to obtain interim orders such as injunction or appointment of receiver for the purpose of protection of the disputed property during pendency of the civil litigation. simply because wrong is committed by the Executive Magistrate in the matter of initiation of proceedings under Section 145 Procedure Code on the background of pendency of civil suit, it cannot be said that the Executive Magistrate should now ignore the ultimate relief granted by civil court in favour of second party and direct restoration of possession to Party No.1. The decree of civil court for possession has achieved finality in law and therefore, Executive Magistrate is bound to obey the decree of civil court.
- 12. The civil court has settled the rights of second party and as a consequence thereof, the actual possession of the disputed lands should go to



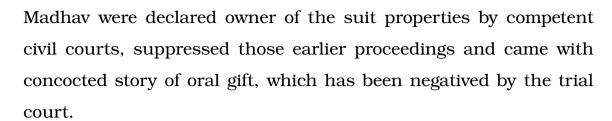
Thus from the aforesaid observations of this court it is clearly evident that the civil court had already settled right of Umaji and Madhav being the owner of the suit properties and therefore, refused to entertain the aforesaid criminal writ petition. Not only this but the Executive Magistrate while passing order dated 29/06/1994 had observed that Umaji and Madhav had purchased the suit properties vide registered sale deed by referring all the earlier civil proceedings bearing RCS Nos. 36 of 1963, 272 of 1973, 40 of 1991, 41 of 1991, Appeal No.6 of 1980 and order of this court in Proceeding No.185 of 1991.

16. It is extremely important to note that Azeemunisa Begum and Sayeda Begum, who have filed the original appeal RCA No. 44 of 2016 on rejection of their RCS No. 215 of 1994, were parties in suit bearing RCS No. 36 of 1963, wherein civil rights of Umaji and Madhav were crystallized by the competent civil court and they had also admitted the position that the suit properties were sold by their father to Umaji and Madhav by way of registered sale deed dated 11/10/1958 after being impleaded in the suit and by adopting the written statement of Ahmed Ali. It is also important to note that though Azeemunisa Begum and Sayeda Begum were party to that suit, they suppressed the entire earlier proceedings and even the observations of this court in respect of creation of legal right by Umaji and Madhav over the suit properties while filing the subsequent suit bearing RCS No. 215 of 1994. This



- 17. The learned counsel for respondent Nos.1/1 to 1/10 relied upon various judgments as follows:
 - 1) Wander Ltd. and another vs. Antox India P. Ltd, 1990(Supp) SCC 727;
 - 2) Maharwal Khewaji Trust (Regd.) Faridkot vs. Baldev Dass, (2004) 8 SCC 488;
 - 3) Sunil s/o Madanlal Agrawal vs. Jawaharlal s/o Nandlal Chittarke, 2012(2) Mh.L.J.254 and
 - 4) Prakash Ahuja vs. Ganesh Dhonde and others, 2016(6) ABR 745.

It has been observed in the above judgments that the nature of the property cannot be permitted to be changed and for avoiding multiplicity of proceedings, temporary injunction has to be granted for restraining further alienation during pendency of appeal or proceeding. It has also been observed in the aforesaid judgments that discretion exercised by the lower court is not to be interfered with in appeal. However, all these observations will be applicable to the party who has come with clean hands before the court. It is a principle of law that who seeks equity, must do the same. However, in this case, the record prima facie indicates that ownership of Umaji and Madhav over the suit properties was established twice in the earlier proceedings which remained Further, by giving unchallenged and thereby attained finality. complete go-bye to the earlier proceedings, Azeemunisa Begum and Sayeda Begum filed another suit knowing well that Umaji and

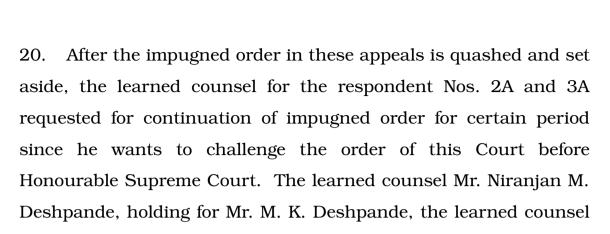


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18. Further, it is also extremely important to note that the earlier dispute was between Satwaji i.e. father of Umaji and Madhav and the earlier owners of the suit properties. Thereafter, Umaji and continued the proceedings and established Madhav ownership over the suit properties. Now their next generation is fighting for getting fruits of earlier decrees. Likewise, the third generation of original owner Ahmed Ali has continued the litigation despite it has already been established that Ahmed Ali had sold the suit properties. Under such circumstances, I do not find that there is prima facie case established by Azeemunisa Begum and Sayeda Begum. Per contra, it appears that they have suppressed the earlier proceedings despite being party to it and filed RCS No.215 of 1994 on account of new ground of alleged oral gift theory. It is also important to note that if the injunction granted by the learned appellate court is allowed to be continued further, then there will be no end to the present litigation and it will continue for indefinite period leaving the appellants deprived from getting fruits of earlier proceedings. Thus, it has been revealed that twice it has been established by the competent civil court that Umaji and Madhav were owners of the the suit properties and the said fact remained unchallenged. There should be an end to the litigation specially when the finding of competent civil court determining the legal ownership of Umaji and Madhav over the suit properties.



19. Therefore, considering all these facts, I come to the conclusion that the learned appellate court has wrongly restrained the appellants from alienating the suit properties till decision of appeal only on the basis of certain display board and by ignoring the vital ingredients required for granting equitable relief of temporary injunction. The record clearly shows that Azeemunisa Begum and Sayeda Begum failed to establish prima facie case in their favour for securing the temporary injunction as prayed. Moreover, they have also suppressed the earlier proceedings while filing RCS No.215 of 1994. It is to be noted here that there was no injunction of any kind was running against the present appellants during pendency of the suit. In fact, Azeemunisa Begum and Sayeda Begum despite filing the application for grant of temporary injunction in the suit, did not press the same and requested to the trial court to hear the same alongwith the suit. It is significant to note that the advocate for the present appellants had in fact made statement before the trial court that the appellants would not alienate the suit properties till the decision of the suit. Thus, on dismissal of the suit, the said statement also become useless and it can not be considered as a ground for granting further injunction in favour of Azeemunisa Begum and Sayeda Begum. By considering all these aspects, I certainly find that the learned appellate court has definitely erred in restraining defendant Nos.3 & 4 namely, Umaji and Madhav and their legal representatives, who are the appellants in this appeal from alienating the suit properties and creating third party interest thereon till final disposal of the appeal. As such, the impugned order is liable to be quashed and set aside.



for appellants, strongly opposed the submission made on behalf of

21. Since the learned appellate Court i.e. District Court at Ambejogai had granted relief in favour of respondents and thereby restrained the present appellants from alienating the suit property till disposal of appeal and the respondents now want to challenge the order of this Court setting aside the said order, the said order can be continued for certain period considering the ensuing Diwali Vacation which starts from tomorrow. Accordingly following order is passed.

ORDER

1. Both the appeals are allowed and the impugned common order dated 15/01/2021 passed by the learned appellate court i.e. District Judge-2, Ambajogai in RCA No.44 of 2016 below applications Exhibits-34, 40, 44 and 80 is quashed and set aside.

respondent Nos. 2A and 3A.



- 2. Both the appeals are accordingly disposed of.
- 3. Pending civil applications, if any, accordingly stand disposed of.
- 4. The order of learned appellate Court i.e. the impugned order in these appeals is continued for further period of four weeks.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-