

(2001) 12 BOM CK 0018
In the Bombay High Court
Case No : Second Appeal No. 141 of 1997

Anant Shripati Kodre

APPELLANT

Vs

Sukharam Shripati Kodre and Others

RESPONDENT

Date of Decision : 14-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Article 110

Citation : (2002) 5 BomCR 409

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Suhasini Mutalik, for the Appellant; M.D. Angal, for the Respondent

Judgement

R.J. Kochar, J.—Joint families most of the times wreck on the rock of the joint families properties. Lis has always been amongst the blood relations-father, sons and brothers in respect of properties. In the present case the original plaintiff is the brother of the original defendants. He filed the present suit for partition and separate possession of his 1/3rd share in the properties shown in paragraph 5-a of the plaint, being ancestral lands. According to the plaintiff the other properties shown in paragraphs 5-b and 5-f were purchased from the income from the ancestral lands. The plaintiff has also alleged that the house properties shown in paragraph 5-f and 5-g were also purchased from the income of the joint family property. The defendants 1 and 2 contended that during the life time of Shripati, the father of plaintiff and the defendant No. 1, the plaintiff was given gold and silver in lieu of his share and he decided to quit the family because of domestic quarrels. The defendants have therefore contended that the plaintiff now cannot claim any share in any property. They have also contended that except the lands shown in para 5-1 of the plaint all the properties are self acquired properties of defendant Nos. 1 and 2 and therefore, the plaintiff is not entitled to claim any share in that property. The defendants have further raised a point of limitation as according to them the suit was barred by limitation as on the admission of the plaintiff himself he was driven out from the house as back as in 1955-58 and

therefore, the suit filed in the year 1977 was clearly barred by limitation. According to the defendants the plaintiff has no cause of action to file the suit as he has received moveable properties as is disclosed in the Will executed by the deceased Shripati in December 1965 (Ex. 188) wherein it is clearly stated that in or about 1958 the plaintiff was given 20 Tolas of gold and 500 tolas of silver in lieu of his share in the joint family property. According to the defendants plaintiff was given far more share in the property than he was entitled to. It is also contended by the defendants that the plaintiff did not file this suit during the life time of his father Shripati, who expired in 1975 and if the suit were to be filed during his life time he would have definitely testified the fact of partition and the fact of giving of the gold and silver to the plaintiff in lieu of his share in the immovable properties. On the point of limitation the defendants have contended that if the plaintiff was forcibly ousted from the house some where in the year 1958 and that if his life was miserable thereafter, in that case he could have filed a suit for partition of the joint family properties within the prescribed period of 12 years i.e. before 1970. According to them the plaintiff did not do so as he had accepted the fact of partition when he was given gold and silver by Shripati as his share in the joint family property. The defendants have therefore strongly contended that the suit deserves to be dismissed on the ground of limitation as well as on merits. Alternatively the defendants have submitted that the plaintiff has claimed share in the joint family property shown in paragraph 5-a of the plaint which are admittedly the ancestral property. According to the plaintiff himself the other properties were not the ancestral properties and same were not acquired from income the ancestral property and therefore he cannot be given any share in the properties which are not the ancestral properties and which were not acquired from the nucleus of the joint family ancestral properties.

2. The learned Judge has framed as many as 12 issues on the basis of the pleadings of the parties and after considering oral and documentary evidence before him and he answered the same and has recorded his findings holding the suit not barred by limitation and not bad for misjoinder of cause of action and misjoinder of parties; that the defendants did not prove that the plaintiff was ousted from the joint family about 25 years back by giving him gold and silver, that the defendants did not prove that they became owners of the suit property by adverse possession; that they did not prove that the plaintiff had purchased lands in Akulj region with the aid of the joint family property that the plaintiff has proved that the suit properties mentioned in the plaint are the joint family properties and that the defendants have not proved that the property mentioned in para 5-b, 5-h are the self acquired properties of defendant No. 1; the trial Court finally held that the plaintiff was entitled to get the possession of his 1/3rd share out of the properties. The trial Court has also held that the plaintiff was entitled to past and future means profit. The learned trial Judge has given an order that the plaintiff is entitled to half share in the suit lands viz. Survey No. 51/2-B, 51/5, 51/6 and 51/A more particularly described in para 5-A of the plaint. It is also held that the plaintiff is entitled to 1/3rd share out of Survey No.

58/3, 58-6-B/2, 58/6-B1-A/2 more particularly described in para 5-A of the plaint and other properties more particularly described in paras 5-B and 5-H of the plaint. The learned Judge has also passed other consequential orders while decreeing the suit.

3. It may be stated here that one of the defendants Shri Ganesh Dattatraya Jog did not contest the suit at any stage of litigation he was, therefore, deleted in the present proceedings in the High Court.

4. The defendants being aggrieved by the impugned judgment and order of the learned trial Judge filed first appeal before the Additional District Judge, Pune. The learned lower Appellate Court partly allowed the appeal by its impugned judgment 25-9-1996. The learned lower Appellate Court modified the decree and declared that the plaintiff was entitled to half share and the defendant No. 1 was entitled to 1/4th share and defendant Nos. 2 and 3 had jointly 1/4th share in the ancestral agricultural lands bearing Survey No. 51/A, 51/2-B, 51/5 and 51/6 more specifically described in para 5-A of the plaint and three houses bearing Final No. S. No. 1955, 1956, 1957 at Sr. No. 2, 3, 4 in para No. 5-G of the plaint. The learned Judge set aside the decree relating to the partition of the agricultural properties, house properties and movables except the ancestral property as mentioned. The learned Judge directed the Collector, Pune for carving out the separate share of the plaintiff, defendant No. 1 and defendant Nos. 2 and 3 as per their extent of shares. He also ordered separate inquiry determining the mesne profits in respect of the shares of the plaintiff in the ancestral property in respect of which the partition has been ordered from the date of the filing of the suit till the actual delivery of the possession of the share of the plaintiff.

5. The appellant in the present second appeal is the original plaintiff who is aggrieved by the impugned judgment and order passed by the first Appellate Court. The respondents in the second appeal the original defendants, have filed their cross objections on 29-4-1996. The second appeal was admitted by my predecessor after hearing both the learned Advocates on the ground of "substantial question about coparcenary and burden of proof require consideration".

6. I have heard both the learned Advocates at length as both have taken pains to take me through the whole of the proceedings and the oral and documentary evidence and record. Both the learned Advocates have also cited number of authorities in support of their respective submissions.

7. Ms. Mutalik, the learned Advocate for the appellant-plaintiff has assailed the judgment of the lower Appellate Court. According to her the plaintiff had sufficiently proved that the whole family property was an ancestral property and whatever was subsequently acquired was from the nucleus of the said property. According to her property mentioned in para 5-a and 5-b of the plaint were the lands which were cultivated by the father of the plaintiff, Shripati, even prior to the birth of the plaintiff and he was doing so on and for joint family property as

the Karta of the family. According to her Shripati was not cultivating the said lands in his personal capacity. It is also submitted by the learned Advocate that the properties described in para 5-a and 5-d of the plaint admeasuring 14 acres and 12 gunthas of Bagayat land where there was sugar cane cultivation and fruits like mangoes, bananas, vegetables and also other crops like wheats, jawar etc. were produced and that the said lands were irrigated by well and canal water. She has also submitted that the plaintiff had sufficiently proved that the grocery shop was started in 1920 in the ancestral property and therefore there was sufficient income from the grocery shop to enable his father Shripati to make subsequent purchase of land from the year 1942 onwards. It is contended by Ms. Mutalik that the plaintiff has discharged his burden to prove that joint family had sufficient nucleus to adequate further joint family property. According to her the properties described by the plaintiff in the plaint are ancestral properties and not the self acquired property of Shri Shripati to the extent contended by the defendants. The defendants have failed to discharge their burden to prove that Shripati had independent and enough sources of income to acquire the alleged self acquired property and start the grocery shop for purchase the land in 1956. According to the learned Advocate the plaintiff has discharged the burden of initially proving that there was sufficient nucleus to start grocery shop as well as to purchase the property in 1927 and thereafter subsequent purchases. It is submitted by the learned Advocate that the plaintiff has discharged his initial burden to prove that the properties were joint family properties and were not the self acquired properties of Shri Shripati. Ms. Mutalik submitted that the Appellate Court has wrongly cast the entire burden upon the plaintiff and has manifested erred in casting the whole burden on the plaintiff to discharge the burden which was of the defendant No. 1. According to her the Appellate Court had adopted essentially a wrong approach, whereby the entire burden is shifted on the plaintiff and subsequently the order is vitiated. According to the learned Advocate Shripati was the Karta of the joint family in 1969 and he had acquired all the properties from the source of the joint family income and whatever properties were acquired form part of the ancestral properties. She has also submitted that even assuming that there was partition between the two brothers viz. Shri Shripati and Shri Sukharam in the year 1927 till that year all the properties were joint family properties and the grocery shop as well as the other properties purchased must form the part of the ancestral properties. Taking the contention of the Will of Shripati the learned Advocate has submitted that her client did not accept the Will and denied the signature of Shripati and submitted that he was under the influence of defendant No. 1 and therefore, the Will did not reflect the true intention of the deceased Shripati. According to the defendants the plaintiff was ousted from the joint family and he was given 20 tolas of gold and 507 tolas of silver. She has relied on the following citations.

1. 16 I.C. 750.

2. Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, .

3. Mst. Rukhmabai Vs. Lala Laxminarayan and Others, .
4. K.V. Narayanaswami Iyer Vs. K.V. Ramakrishna Iyer and Others, .
5. Mudi Gowda Gowdappa Sankh Vs. Ram Chandra Ravagowda Sankh, .
6. Phoolchand and Another Vs. Gopal Lal, .
7. Shankar Balwant Lokhande (dead) by L.Rs. Vs. Chandrakant Shankar Lokhande and Another, .
8. Kalyani (Dead) by Lrs. Vs. Narayanan and Others, .
9. Kondiram Bhiku Kirdat Vs. Krishna Bhiku Kirdat (Deceased by L.Rs.), .
10. Gulabrao Maruti Bhagat Vs. Bhagwan Nana Bhagat, .
11. Indranarayan Vs. Roop Narayan and Another, .
12. Meethiyan Sidhiqu Vs. Muhammed Kunju Pareeth Kutty and others, .
13. Sadasivam Vs. K. Doraisamy, .
14. D.N. Venkatarayappa and another Vs. State of Karnataka and others, .
15. Annasaheb Bapusaheb Patil and others Vs. Balwant alias Balasaheb Babusaheb Patil (dead) by LRs. and heirs etc., .

There is no quarrel with the propositions and ratios laid down in the aforesaid cases therefore I have not discussed the decisions cited by both the learned Advocates as the facts of the present case do not require any authorities as would be clear from the following discussion.

8. Shri Angal, the learned Advocate for the respondents at the threshold questioned the jurisdiction of this Court in Second Appeal. He has also submitted that this Court cannot reappraise and reappreciate evidence which has been thoroughly considered by the lower Appellate Court. The lower Appellate Court has recorded clear findings of facts after examining the entire documentary and oral evidence adduced by both the parties. The lower appellate Court has concluded that except the properties shown in para 5-A of the plaint all other properties were self acquired properties of the defendant Nos. 1 and 2 and that this finding of the facts is based on proper appreciation of evidence and therefore, it should not be interfered in the second appeal. According to Shri Angal there is absolutely no substantial question of law which requires to be decided in the present second appeal. Shri Angal has supported the judgment of the lower Appellate Court without prejudice to his cross objections. According to the learned Counsel, both the judgment and decree of the lower Appellate Court does not require consideration in the second appeal. He further submitted, without prejudice to his other rights and contentions, that plaintiff had already received his share in the form of 20 Tolas Gold and 507 Tolas Silver, the plaintiff could not seek any other property by seeking partition of the joint family

particularly after the death of Shripati though the first Appellate Court has granted his share in the ancestral property described by the appellant. According to Shri Angal the joint family did not have sufficient nucleus to purchase the other properties but Shripati had his independent grocery shop and also other income from cultivating other lands as tenant in his personal capacity. He had subsequently purchased the lands which he was cultivating. Shri Angal has therefore submitted that from the aforesaid facts it is clear that the remaining property was self acquired property of Shripati and was not the ancestral property of the joint family. Shri Angal has also questioned the legality of the findings of the courts below in respect of the limitation of the suit which was not within 12 years from the date of ouster of plaintiff somewhere in 1958. Shri Angal has pointed out that it was his own case that he was ousted from the joint family in 1958 and therefore, the suit filed by him in the year 1977 is clearly barred by limitation. Shri Angal questions the bona fides of the plaintiff who waited for the death of his father Shripati to file the present suit for partition. Had the plaintiff filed the suit during the life time of Shripati, he would have deposed on the facts of ouster and partition having been made in the year 1958 and that the plaintiff had already received his share at that time. Shri Angal has also submitted that the plaintiff has not discharged initial burden of proving that the joint family had sufficient nucleus to purchase and acquire further properties. Shri Angal has pointed out another fact that if the grocery shop was a source of income for the joint family existing even prior to 1927 in that case in the year 1937 at the time of partition between Shripati and his brother the said grocery shop would have formed part of the joint family property and would also have been the subject matter of partition. The said shop was not the subject matter of the partition as it was the self acquired property of Shripati. The conclusion therefore will have to be drawn that the grocery shop which existed on the date of the partition in the year 1937 between three brothers viz. Shripati, Gangaram and Dhondiba and as it was not partitioned that the grocery shop was the personal property and business of Shripati and that it did not form part of the joint family property. Shri Angal therefore makes the point to submit that whatever property was acquired by Shripati was from the grocery shop and from his independent cultivation from other lands as tenant and therefore all these properties did not form part of the ancestral properties. According to Shri Angal the defendants have proved their case and have discharged their burden wholly. Shri Angal has also submitted that the share of the plaintiff under the Will cannot be claimed in the suit. Even without prejudice to the aforesaid contention the learned Advocate submits that the plaintiff will get only 1/2 share in the share of the deceased Shripati. It is submitted that deceased Shripati had 1/3rd share in the ancestral property (himself, wife Krushnabai and son Sukhram). It is therefore submitted that the plaintiff will get 1/6th share in the properties as mentioned in para 5-a of the plaint. He has finally concluded that the plaintiff will get 1/4th share (Shripati, Krushnabai, plaintiff and defendant No. 1 each one taking 1/4th share) and in addition to that the plaintiff will get 1/2 share of deceased Shripati which would come to 1/8th share. Shri Angal has computed

the net total share of the plaintiff to be as $1/4 + 1/8 = 3/8$ and nothing more than that in the properties in which the Appeal Court has granted share to the plaintiff. Shri Angal has drawn my attention to the judgment of the Supreme Court reported in Ramaswamy Kalingaryar Vs. Mathayan Padayachi, , to the following portion of the judgment to emphasis the narrow and restricted parameters of the jurisdiction of this Court while considering second appeal u/s 100 of C.P.C.:

"It is plain that the High Court itself demolished what it built by concluding in the manner above stated. Suggested shortcomings in the findings of fact recorded by the courts below would not alter the situation that those were findings of facts unquestionable, under the provisions of section 100, C.P.C., which defines the contours of the power of the High Court in second appeal. Significantly, no question of title or an issue thereon was raised by the parties before the courts below. Though the High Court points out that question of title was raised as an alternative ground in the written statement but no argument on that account was raised by the defendant before the first Appellate Court. Rather title and possession on the land in dispute was asserted by Muthiah only on the basis of Will in his favour which plea of his miserably failed and has remained failed throughout. The only issue before the courts below, on the strength of which the fate of the case rested was whether Ramasamy was in sole possession of the suit property. That finding was in his favour. The High Court itself has left the question of title open to be decided in appropriate proceedings. It was for the protection of possession of Ramasamy that the grant of injunction became necessary and having regard to the facts and circumstances, the plaintiff-Ramasamy was given relief on the basis of the case set up by him and supported by evidence. The High Court had thus no jurisdiction either to reassess the evidence or without reassessing as such find any infirmity in it. The measure of proof is within the domain of the two courts of fact in the hierarchy. Sufficiency of proof can be no ground for the High Court to interfere in a finding of fact. Thus we are of the considered view that the High Court fell in a legal error in this case reversing the judgments and decrees of the courts below and dismissing the suit of Ramasamy. Accordingly, this appeal is allowed and the judgment and the decree of the trial Court is restored. There shall be no order however, as to costs in this Court."

Shri Angal has submitted that this Court has to be very cautious in its approach while considering the findings of facts by the lower courts.

9. I have considered the submissions of both the learned Advocates, who have are obviously conscious of the limited jurisdiction of this Court u/s 100 of the C.P.C. while deciding the second appeal. Before I enter into the main issues I would like to dispose of the points that the suit is barred by limitation beyond 12 years and that the defendants did not prove the ouster of the plaintiff from the joint family. On the submissions of Shri Angal itself I cannot take a different view taken by both the courts below concurrently on both these issues. Both the

courts concurrently held that the suit is not barred by limitation and that the defendants have not proved the ouster of the plaintiff from the joint family. I do not find any error of law in the aforesaid two findings of the lower courts. Both the courts have considered and appreciated and have come to their own conclusions based on facts and evidence on the said points. I therefore do not intend to interfere with the said decisions taken by both the courts below concurrently. The findings of the trial Court in respect of the properties was that the entire property described by the plaintiff was the joint family property. The trial Court has held that the property acquired subsequently was from the nucleus available from the ancestral property as well as from the grocery shop. The trial Court and the Appellate Court both have concurrently found and held that the properties specified in para 5-a of the plaint viz. 51/2-B, 51/5, 51/6 and 51/A are the ancestral properties and therefore held that the plaintiff is entitled to partition in the aforesaid ancestral agricultural land and the house property. The Appellate Court has however, differed from the trial Court on the point of the other properties being the ancestral properties. The trial Court's finding was that all the properties mentioned by the plaintiff belonged to the joint family as ancestral properties. The lower Appellate Court however has not accepted the said findings in its entirety. According to the Appellate Court the plaintiff has not proved that the agricultural lands, house property, movables specifically described in paragraph 5-b and 5-h of the plaint are the joint family property except the house property viz. three houses described in para 5 of the plaint. The Appellate Court has also reversed the findings of the trial Court in respect of the properties which were claimed to be self acquired properties of Shripati as ancestral properties. It is however not disputed and there is an agreement between both the learned Advocates that the suit properties described in para 5-E(1) to 5-E(4) purchased after the filing of the suit cannot be considered to be joint family property. Both are at idem that properties acquired by both the parties after filing of the suit cannot be brought in the hotchpotch of the joint family property. The Appellate Court has considered the pleadings and evidence on record in order to find out the nature of the properties whether ancestral or whether self acquired. The learned Appellate Court has not accepted the case of the plaintiff that the partition between his father and three brothers of Shripati had taken place in the year 1960. It has held that there was no evidence on record to prove the fact that there was such partition in the year 1960. The Appellate Court has found that there was no pleading by the plaintiff to the effect that such partition had taken place in the year 1960 and there was nothing on record to say that. Unfortunately the defendant No. 1 has relied upon a mutation entry at Exh. 168-A to show that in the year 1937 deceased Shripati was found in actual possession of Survey No. 51/A, the learned Judge has drawn an inference in the aforesaid circumstance that the partition had taken place in the year 1937 wherein the possession of Survey No. 51/A of the property was allotted to Shri Shripati. The learned trial Judge has on the basis of evidence on record held that properties 51/28, 51/5, 51/6 and 51-A (along with house property) are the ancestral properties. The learned Judge has also taken support

from the Will of Shripati to find the aforesaid fact. I do not find any infirmity in the said findings recorded by the Appellate Court. The learned Appellate Court has undertaken a good exercise of analysing pleadings and evidence. He has also considered the fact that partition between the brothers of Shripati had taken place in the year 1937 and the grocery shop and the purchase of the lands which carried old survey numbers prior to the partition. He has also considered the fact that the plaintiff had not pleaded at all the existence of the grocery shop as joint family property. On the basis of the pleadings the Appellate Court has discarded the evidence of plaintiff that the joint family had the grocery shop in the year 1937. By the process of proper logic the Appellate Court has come to a right conclusion that the grocery shop was established by the deceased Shripati as his separate establishment and from the income of the shop the lands Survey No. 131/6, 136/6, 137/3 were purchased by Shripati and therefore the said properties were self acquired properties of the deceased Shripati. In the absence of any pleading in respect of the grocery shop being the joint family property by the plaintiff, the learned Appellate Court has rightly discarded his oral evidence that the grocery shop was the joint family. Once the grocery shop is held to be the self acquired property of the deceased Shripati the natural consequences must follow that was not the nucleus of the joint family to generate any income as a source to purchase other lands which were acquired by Shripati from his own independent source of income and the Appellate Court has rightly followed the same by holding that the Survey Nos. 131/6, 136/6 and 137/3 were purchased by the deceased Shripati from the income of the said shop. I do not find any infirmity in the said conclusion of the lower Appellate Court.

10. The learned Judge of the Appellate Court has also applied his mind seriously to the pleadings and evidence on record in respect of the other properties purchased by the deceased Shripati after 1937 to find out whether such purchases were from the nucleus of the ancestral property. The learned Judge has considered the whole evidence and has recorded his findings in respect of each piece of land whether it would bring sufficient income for the family to enable to form a sufficient nucleus for purchase of the other properties after meeting the family expenses. The learned Judge has recorded his findings that nothing was left at the hands of the deceased Shripati after getting the expenses required for cultivation and for maintenance from the income or earnings from the aforesaid ancestral properties. The learned trial Court has positively found on the basis of the evidence that income from the said agricultural land was not enough or sufficient to purchase the properties after adjusting the family expenses. Further more the learned Judge has considered another equally important fact to find that the deceased Shripati had income from the self acquired property i.e. shop and purchase property bearing S.No. 131/6, 136/6 and 173/3. The learned Judge has therefore rightly opined that the deceased Shripati had purchased the agricultural properties from the independent sources of income of his own. In the year 1942 he had purchased the properties at S.No. 58/5, 58/6/2, 58/6-B/1. According to the learned trial Court there was no

evidence on record to show or establish any such proof that the aforesaid properties were purchased by Shripati from the nucleus of the ancestral properties. The learned Judge has appreciated the evidence on record for coming to the aforesaid conclusion. I do not find any infirmity in the said conclusions which are based on the evidence on record. The learned Judge has rightly concluded that the properties, more specifically described in para 5-b and 5-h are not of the joint family properties but they are the self acquired properties of defendant No. 1 and defendant No. 3 and the defendant No. 6 who is the grand son of defendant No. 1.

11. Further the learned Judge has also considered the question of Will of Shripati and his wife Krushnabai. Under the Will of Shripati plaintiff gets 1/2 share of his father. The learned Judge has also drawn proportion of shares of all after adding the share bequeathed by Shripati in his Will. I do not find any infirmity or perversity in the said finding. The learned Judge has particularly computed the shares in accordance with the property. As to the point No. 7 the learned has summarised the properties which are the ancestral properties and the properties which are self acquired properties of other defendant No. 1 and/or his sons, grand sons for which the plaintiff is not claiming any share. The learned Appellate Court has rightly modified the judgment and order of the trial Court in respect of the ancestral property and self acquired property. The learned Appellate Court has corrected the error committed by the trial Court in respect of the self acquired property of the deceased Shripati forming the nucleus of the joint family property. The learned trial Court has given cogent reasons for such modification of the judgment of the trial Court and in that he has rightly applied his mind. The learned Appellate Court has rightly held what was the ancestral property of the joint family and what was the self acquired property of Shripati which cannot be included as ancestral properties of the joint family and the plaintiff, therefore, cannot claim any share in the aforesaid properties which are the self acquired properties of Shripati as the joint family properties. Whatever share is bequeathed by Shripati the plaintiff is entitled to get under the said Will but not as share in the partition of the joint family property as the ancestral property. I therefore do not find any illegality, infirmity or perversity in the impugned judgment and the order of the Appellate Court which has considered all the material on record to come to its own conclusions with which I also agree. He has given cogent reason after appreciating the entire evidence. I do not find any error of fact much less an error of law or any perversity to warrant interference under the restricted jurisdiction u/s 100 of the C.P.C. The order of the first Appellate Court is therefore confirmed. The appeal stands dismissed. The net share of the plaintiff comes to 3/8 in the properties considered by the Appellate Court. The plaintiff gets 1/4th share (Shripati, Krushnabai, plaintiff and defendant No. 1 each one taking 1/4th share) and in addition to that the plaintiff will get 1/2 share of deceased Shripati which comes to 1/8th share. Thus the total share of the plaintiff comes to $1/4 + 1/8 = 3/8$.

12. The respondents have filed their cross objections. I have held that the

judgment and order of the lower Appellate Court is proper and legal in every respect subject to the quantum of share of the plaintiff which is 3/8 instead of 1/2 as granted by the Appeal Court. I have already dealt with the points decided against the respondents hereinbefore. Both the courts have recorded concurrent findings on those points. The cross objections are also dismissed subject to the aforesaid modification. Both the parties to bear their own costs.

13. Ms. Mutalik, prays for stay of this order. In view of the concurrent findings of three courts I do not wish to grant any stay. Shri Angal, however, in his usual fairness has made a statement that his clients will abide by the interim order granted in the civil application for a period of 12 weeks.