

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT
AURANGABAD

SECOND APPEAL NO. 1705 OF 2005
WITH
CIVIL APPLICATION NO. 5021 OF 2008

1. Tukaram s/o Rekha (Rekhu) Rathod
Died as per L. Rs.
- 1/1. Kishan Tukaram Rathod
Age: Major, Occu. Agri.,
- 1/2. Babu Tukaram Rathod,
Age; Major, Occu, Agri.,
- 1/3. Prabhu s/o. Tukaram Rathod,
Age: Major, Occu. Agri.
2. Venkat s/o Tukaram Rathod,
died through his L.Rs.
- 2/1. Sumtrabai w/o Venkat Rathod,
Age: 45 years, Occ: Household,
- 2/2. Rajabhau s/o Venkat Rathod,
Age: 39 years, Occ: Agriculture,
- 2/3. Sanjay s/o Venkat Rathod,
Age: 36 years, Occ: Agriculture,
All R/o. Village Radi, Tq. Ambajogai,
Dist. Beed.
3. Sonabai W/o. Tukaram Rathod,
Age: 64 years, Occu. Agri.
4. Namdeo s/o. Mahadu Rathod,
Age: 40 years, Occu. Agri.
5. Manik S/o. Mahadu Rathod,
Age: 26 years, Occu. Agri.
6. Gopikabai w/o. Rama Rathod
age Major, Occu. Household
7. Vikram s/o Ram Rathod

Age: Major, Ocu. Agri.
All R/o. Radi Lamantanda,
Tq. Ambajogai Dist. Beed.

... **APPELLANTS**
(Orig. Defendants)
(Appellant No. 6 & 7 are L.Rs.
of Respondent no. 1.)

VERSUS

1. Sham Balkrishanrao Selukar,
Died, through his L.Rs.
 - 1/A. Nahush s/o Sham Selukar,
Age: 49 years, Occ: Agri. And Advocate,
 - 1/B. Rajni w/o Sham Selukar,
Age: 71 years, Occ: Household,
 - 1/C. Anjali w/o Shashikant Kulkarni,
Age: 52 years, Occ: Household,
 - 1/D. Snehal w/o Sanjeev Kurundkar,
Age: 42 years, Occ: Household,
 - 1/E. Yogita w/o Dhananjay Khodve,
Age: 35 Years, Occu: Household,
- All above R/o. Selukar wada,
Deshpande Galli, Ambajogai, Dist. Beed.
2. Arun s/o Balkrishanrao Selukar,
Age: 39 years, Occ: Agri., and Service,
R/o. Ambajogai, Tq. Ambajogai,
Dist. Beed, Now Residing at Pune, Kothrud,
Pune-29.
 3. Vishnu s/o Balkrishanrao Selukar,
Age: 37 years, Occ: Service, R/o. Ambajogai,
Now residing at Pune, Keshavanagar, Pune-29

... **RESPONDENTS (Ori.**
Plaintiffs)

4. Haribhau s/o. Keshavrao Selukar,
Age: 66 years, Occ: Pensioner, Teacher
R/o. R/o. Ambajogai, now residing at
Majalgaon, Parwati Xerox Center,

near Sidheshwar High School, Majalgaon
Dist. Beed.

... Abated

5. Sadashiv Keshavrao Selukar,
Age: 65 years, Occ: As above,
R/o. Ambajogai, Tq. Ambajogai,
Dist. Beed, Now at Pune, D/0004,
Bharat Nagar Bharat Kunj Society 2
Erandwane, Pune-38.
6. Mukund s/o. Balkrishanrao Selukar,
Age; 28 years, Occ: Tailoring work,
R/o. Ambajogai, now residing at Majalgaon,
Parwati Xerox Centre,
near Sidheshwar High School,
Majalgaon, Dist. Beed.
7. Prabhakar s/o. Balkrishanrao Selukar,
Age: 35 years, Occu. Service, R/o: Ambajogai,
now residing at Pune, D/004, Bharat Nagar,
near Bharat Kunj Society-2, Erandwane, Pune-38

... Respondents
(Defts. Nos. 6 to 9)

...

Advocate for Appellants : Mr. S.S. Kazi
Advocate for Respondent Nos. R/1/B to R/1/E : Mr. Shrikant Kulkarni
Party in Person Respondent No. R/1/A : Mr. Nahush Sham Selukar

**WITH
SECOND APPEAL NO. 109 OF 2014**

- 1) Sham s/o. Balkrishanrao Selukar,
(Died through his L.Rs.),
- 1/A) Rajni w/o Sham Selukar,
Age: 71 years, Occ: Household,
- 1/B) Anjali w/o Shashikant Kulkarni,
Age: 52 years, Occ: Household,
- 1/C) Nahush s/o Sham Selukar,
Age: 49 years, Occ: Agri. And Advocate,
- 1/D) Snehal w/o Sanjeev Kurundkar,
Age: 42 years, Occ: Household,

1/E) Yogita w/o Dhananjay Khodve,
 Age: 35 Years, Occu: Household,
 All above R/o. Selukar wada,
 Deshpande Galli, Ambajogai, Dist. Beed. ... **Appellant**
(Orig. Plff. No. 1)

VERSUS

- 1) Tukaram s/o. Rekha (Rekhu) Rathod
 (Died) Through his L.Rs.
- 1/1) Kishan Tukaram Rathod-died-LR's
- 1/1/1) Kasibai Kishan Rathod, Age: Major,
 Occu: Household, R/o.Radi Tanda,
 Post. Radi, Tq. Ambejogai, Dist. Beed.
- 1/1/2) Sagarbai Anna Pawar, Age: Major,
 Occu: Household R/o. Kuppa Tanda,
 Tq. Wadwani, Dist. Beed.
- 1/1/3) Anjanabai Uttam Aade
 Age: Major, Occu: Household
 R/o.Radi Laman Tanda,
 Post Radi, Tq. Ambejogai, Dist. Beed.
- 1/2) Babu s/o. Tukaram Rathod,
 Age:56 years, Occupation and R/o. As above.
- 1/3. Prabhu s/o. Tukaram Rathod,
 Age: 53 years, Occupation: Agriculture,
 R/o. As above.
2. Venkat s/o. Tukaram Rathod,
 Age: 46 ars, Occup: Agriculture, R/o. As above.
3. Sonabai w/o. Tukaram Rathod,
 Age: 64 years, Occup: Agriculture, R/o. As above.
4. Namdeo s/o. Mahadu Rathod,
 Age: 40 years, Occup: Agriculture, R/o. As above.
5. Manik s/o. Mahadu Rathod,
 Age:41 years, Occup: Agriculture, R/o. As above.
6. Haribhau s/o. Keshavrao Selukar,

- Age:81 years, Occup: Pensioner
Teacher R/o. Ambajogai, Now residing
at Majalgaon, Parvati Xerox centre,
Near Saddeshwar High School, Majalgaon,
Taluka Majalgaon, District: Beed. ... Deleted
7. Sadashvirao s/o. Keshavrao Selukar,
Age:75 years, Occup: Retired Government
Servant, R/o. Ambajogai, Tq.Ambajogai,
District Beed Now residing at Pune D/604,
Bharat Nagar Bharat Kunj, Society 2,
Erendwane, Pune 38. ... Dismissed
8. Mukund s/o. Balkrishanrao Selukar,
Age:43 years, Occup: Tailoring work,
R/o. Ambajogai, New residing at Majalgaon,
Parvati Xerox Centre, Near Siddheshwar
High School, Taluka: Majalgaon, District Beed. ... Dismissed
9. Prabhakar s/o. Balkrishanrao Selukar,
Age: 40 years, Occupation Service,
R/o. Ambajogai, Now residing at
Pune D/04, Bharat Nagar,
Near Bharat Kunj Society -2 Erandwane,
Pune- 38. ... Dismissed
10. Arun s/o. Balkrishanrao Selukar,
Age:54 years, Occup: Agriculture,
R/o. Ambajogai, Now residing
at Pune Kotharud, Pune – 29. ... Dismissed
11. Vishnu s/o. Balkrishanrao Selukar,
Age: 52 years, Occupation: Service,
R/o. Ambajogai, Now residing at
Pune Karvenagar, Pune – 29. ... Dismissed.
12. Gopikabai w/o. Rama Rathod,
Age: major, Occupation: Household
and Agriculture, R/o. Radi Lamantanda,
Tq. Ambajogai, District Beed.
13. Vikram s/o. Ram Rathod,
Age: major, Occup: Agriculture,
R/o. Radi Laman Tanda, Taluka Ambajogai,
District Beed.

..RESPONDENTS

(Nos. 1 to 9 Ori. Deft. Nos. 10 to 11)

Ori. Piff.No.2 & 3 Nos. 12 & 13 L.rs. of
R.No.1)

...

Advocate for Appellant Nos. 1A, 1B, 1D and 1E Mr. Shrikant Kulkarni
Party-in-person for Respondent No. 1C-Nahush Sham Selukar
Advocate for Respondent No. 13 : Mr. S.S. Kazi

CORAM : SHAILESH P. BRAHME, J.

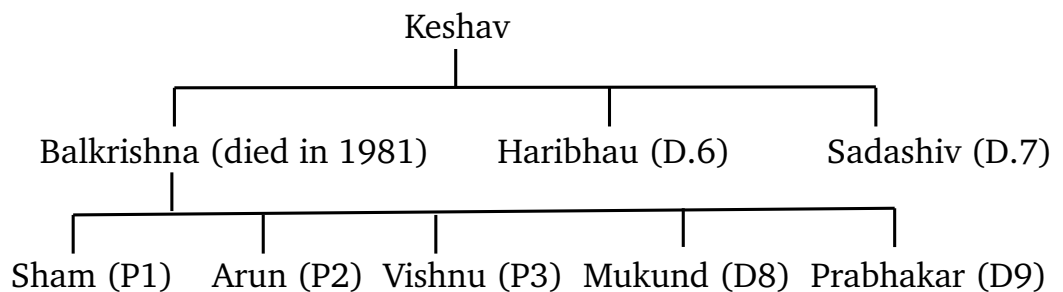
CLOSED FOR JUDGMENT/ORDER : 04.10..2025
JUDGMENT/ORDER PRONOUNCED ON : 17.10.2025

JUDGMENT :-

- . Taken up for final hearing with the consent of the parties.
2. Both appeals are admitted on the substantial questions emanating in order dated 15.02.2008, which can be summarized as follows :
 - (i) Whether the right of preemption is exercisable when defendant Nos. 6 and 7 are not Class I heirs of the deceased Balkrushna ?
 - (ii) Whether the property owned by the defendant Nos. 6 and 7 is liable to be transferred to the plaintiffs U/Sec. 22 of the Hindu Succession Act ?
 - (iii) Whether plaintiffs can get title of the suit lands U/Sec. 22 of the Hindu Succession Act without setting aside the sale deeds in question ?
 - (iv) Is it an error of law committed by Courts below by extending the time to deposit the sale amount, which is against Order XX Rule 14 of the C. P. C. ?
 - (v) Whether the extension of time granted by the lower Appellate Court is logical and palatable ?
 - (vi) Whether defendant Nos. 1 to 4 are not entitled to get benefit of Sec. 44 of the Transfer of Property Act ?

3. Both the second appeals are emanating from decision of the Trial Court in Spl. C. S. No. 25 of 1990 rendered on 30.03.1992 decreeing the suit. Being aggrieved R.C.A. No. 82 of 2001 was preferred by original plaintiffs and cross objection was preferred by the defendants – purchasers. By common judgment dated 30.07.2005 appeal as well as cross objection were dismissed, but judgment of the Trial Court was marginally modified. Against the judgment, Second Appeal No. 1705 of 2005 is preferred by the defendants – purchasers and Second Appeal No. 109 of 2014 is preferred by the original plaintiffs. I propose to refer the papers of Second Appeal No. 1705 of 2005 and the parties therein as per their original status in the suit.

4. The matter pertains to joint family properties and right of preemption U/Sec. 22 of the Hindu Succession Act (hereinafter referred as to the “Act” for the sake of brevity and inconvenience). It is apposite to understand the genealogy, which is as follows :



5. The respondent Nos. 1 to 3 are original plaintiffs, sons of Balkrushna. The respondent Nos. 6 and 7 are their real uncles. The respondent Nos. 8 and 9 are their step brothers. Appellants are the purchasers of the joint family property vide four distinct sale deeds.

6. Following are the details of the registered sale deeds of the joint family properties, which are questioned and for which the right of preemption U/Sec. 22 of the Act is claimed by the plaintiffs.

Sr. No.	Date of sale-deed	Vendor	Purchaser	Land Gat No.	Valuation
1)	29/04/1989	Deft. nos. 8 and 9	Deft. Nos. 4 & 2	488, 595, 490 measuring 1H 41 Ares	Rs. 38,000/-
2)	23/06/1989	Deft. No. 6	Deft Nos. 1, 2, 4 and 5	488, 490 measuring 3-H 23-Are	Rs. 73,000/-
3)	23/06/1989	Deft. No. 6	Deft Nos. 1, 2, 4 and 5	488, 490 measuring 3-H 23-Are	Rs. 73,000/-
4)	23/06/1989	Deft. No. 6	Deft No. 3	491, 595 measuring 25-Are + well	Rs. 8,000/-

7. Plaintiffs had filed Spl. C. S. No. 25 of 1990 when they learnt about above referred alienations and thereafter when their peaceful possession was obstructed by the defendants - purchasers. It is contended by them that land gut Nos. 488, 490 and 595 are the undivided joint family properties. The defendant Nos. 6 to 9, who alienated part of the suit lands in different combinations to the purchasers had no authority to execute sale deeds bypassing claim of preemption of the plaintiffs. The plaintiffs and the defendant Nos. 6 to 9 are in joint possession and cultivation of the suit lands, which is evident from the orders passed in R.C.S. No. 908 of 1987. It is further contended that defendant Nos. 6 to 9 fraudulently alienated the suit lands to the defendant Nos. 1 to 5. The suit is filed seeking relief of declarations and perpetual injunction asserting right of preemption under Section 22 of the Act.

8. The defendant Nos. 2, 4 and 5 – purchasers, contested the suit by filing written statement challenging the status of the suit lands and the plaintiffs. Right of preemption U/Sec. 22 of the Act is denied by them. It is

contended that they are tenants and in occupation of the suit lands even prior to execution of the sale deeds. The suit is stated to be barred by time.

9. The suit proceeded ex-parte as against defendant Nos. 1, 3 and 6 to 9.

10. Plaintiffs adduced evidence of plaintiff No. 1 – Shyam. Defendants adduced oral evidence of four witnesses including D.W. 1 Venkat, D.W. 2 Haribhau, D.W. 3 Jairam and D.W. 4 Kishan. The Trial Court decreed the suit vide judgment dated 30.03.1992 declaring that the sale transactions are void due to the fraud played by the vendors and declaring that they have right of preemption which should be exercised by depositing the amount of consideration within ninety days. The defendant Nos. 1 to 5 are restrained from disturbing plaintiffs possession over the suit land.

11. Plaintiffs being dissatisfied by the quantum of consideration determined by the Trial Court, preferred R.C.A. No. 82 of 2001. Whereas cross objection was preferred by the defendants – purchasers against the declaration and injunction. By common judgment dated 30.07.2005, appeal and the cross objection are dismissed, but the decree is substantially confirmed with certain modifications.

12. Following are the concurrent findings of facts :

- A. Plaintiffs have right of preemption.
- B. Plaintiffs are entitled to acquire the title by paying the consideration shown in the sale deeds to the purchasers.
- C. The period of 90 days is prescribed for payment of consideration, failing which the title shall stand restored to the purchasers and suit shall stand dismissed.
- D. Suit lands are undivided joint family properties and plaintiffs are in possession of the same.

E. Defendant Nos. 1 to 5 are restrained from obstructing possession of the plaintiffs.

F. The consideration to be paid by the plaintiffs is reasonable and proper.

13. Following is the alternate finding of facts :

(a) The sale transactions are not vitiated by fraud.

14. Learned counsel for the appellants Mr. S. S. Kazi submits that plaintiffs have no right of preemption U/Sec. 22 of the Act as after death of Balkrushna suit lands would devolve on the plaintiffs as well as defendant Nos. 6 to 9, who are not Class I heirs. It is further submitted that both Courts below committed apparent error of jurisdiction in granting declaration to the plaintiffs by misconception of law and facts. It is further submitted that plaintiffs are estopped from asserting right U/Sec. 22 of the Act, because they were aware of the deliberations of the transactions, but no readiness was shown by them to purchaser the suit lands.

15. It is further submitted that it is impermissible under Order XX Rule 14 of the Code of Civil Procedure (hereinafter referred as to the "C. P. C." for the sake of brevity and convenience) to extend any time for acquiring title under right of preemption. It is further submitted that the decrees passed by the Courts below are unsustainable without setting aside sale deeds. It is further submitted that the defendant Nos. 1 to 5 are entitled to protection U/Sec. 44 of the Transfer of Property Act, which is totally overlooked. Lastly, it is submitted that suit is barred by limitation.

16. Per contra, learned counsel Mr. Shrikant Kulkarni repels the submissions of the learned counsel for the appellant on predominant submissions that suit lands are undivided joint family properties of Keshav. Plaintiffs and defendant Nos. 6 to 9 would fall within Class I heirs. It is submitted that undivided status and joint possession of plaintiffs is

concurrently held in their favour. It is submitted that there is no partition in the family and Balkrushna is not exclusive owner. Keshav as well as Balkrushna died intestate and, case is covered by Sec. 22 of the Act. It is further submitted that even from the deposition of D. W. No. 2 – Haribhau the joint status and joint possession is made out. It is further submitted that defendants – purchasers did not claim partition U/Sec. 44 of the Transfer of Property Act. They are strangers and rightly enjoined by the Courts below. It is further submitted that no time has ever been extended by the lower Appellate Court.

Status of the family and the suit lands :

17. Keshav had three sons namely Balkrushna, who died in the year 1981, Haribhau (defendant No. 6) and Sadashiv (defendant No. 7). Plaintiffs and the defendant Nos. 8 and 9 are the sons of Balkrushna. Suit lands are contended to be ancestral properties in the plaint and especially that of deceased Balkrushna. It is nobody's case that there was partition by metes and bounds amongst the members of the family either during life time of Keshav or Balkrushna. It is not controverted that R.C.S. No. 908 of 1987 was filed by defendant Nos. 6 and 7 and plaintiff No. 1 – Shyam against defendant Nos. 1, 2, defendant No. 1's son and grand son for injunction. It was decreed vide judgment and order dated 11.03.1994 and the decree was confirmed upto High Court in Second Appeal No. 829 of 2009. It is held by the High Court in its order dated 05.12.2009 that the plaintiffs were in lawful possession and the defendants were restrained from causing interference in their possession. It is recorded that remedy of purchaser of undivided share is to sue for general partition and to seek possession of the specific share purchased by them.

18. The parties were aware about the decree of injunction passed in favour of the plaintiffs in R.C.S. No. 908 of 1987. In that case also none of

them took plea of partition. In present case, the defendant No. 1 Venkat admitted in his cross examination that there was no separate division of shares of the defendant Nos. 8 and 9, no document of partition was disclosed by the defendant Nos. 8 and 9 and all suit lands were joint. It is further admitted that the witness was unable to identify the share purchased by him from land gut No. 488 and gut No. 595. It is further admitted that no application for partition of separate share was made by him.

19. It is disclosed in the cross examination of D.W. No. 2 – Haribhau that suit lands were ancestral properties and those were in joint possession. He further admitted that though after death of his father, 1/3rd share was recorded, but there was no separate share and the partition by metes and bounds. In the wake of the depositions of Venkat and Haribhau coupled with the findings recorded in earlier proceedings, I find that both the Courts below are justified in recording that the plaintiffs and the defendant Nos. 6 to 9 form undivided joint family and they are joint in possession.

20. Both Courts below concurrently granted injunction considering joint possession of the members of the undivided family. The defendants – purchasers are unable to point out their separate possession of the purchased share from the revenue record. The defendant nos. 6 to 9 did not file written statement in the present matter. The defendant nos. 6 and 7 were the plaintiffs of earlier Regular Civil Suit No. 908/1987, who had pleaded that suit lands are ancestral joint family properties. Only inference, which can be drawn is that there is no partition in the family and what is alienated by defendant nos. 6 to 9 is their undivided share to the defendant nos. 1 to 5.

Right of preemption under Section 22 of the Act :

21. A preferential right under Section 22 of the Act is available to Class I heirs. Section 22 of the Act reads as follows:

"22. Preferential right to acquire property in certain cases.-(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in Class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in Class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation. In this section, 'court' means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf."

22. The question which needs consideration is as to whether the plaintiffs and the defendant nos. 8 and 9 can be treated to be Class-I heirs and as to their status in juxtaposition with Keshav or Balkrishna. Balkrishna died in 1981 is survived by plaintiffs and defendant nos. 8 and 9 as his children and

defendant nos. 6 and 7 as brothers. My attention is adverted by Mr. Kazi learned counsel for the appellants to heirs enumerated in Class-I and Class-II of the Act. If Balkrishna is treated to be propositus then his children would fall in the category of Class I heirs but defendant nos. 6 and 7 would be in entry No. II(3) of Class II. It is contended that as against children of Balkrishna, uncles would fall in entry No. VII of Class II. My attention is adverted to the plaint to show that suit lands are described to be Balkrishna's properties, he being manager of the properties.

23. The plaint does not reflect name of Keshav. It is nobody's case that Balkrishna acquired the suit properties. Rather consistent theory is that suit lands are ancestral properties. There was no partition amongst Balkrishna, Haribhau (defendant no. 6) and Sadashiv (defendant no. 7). Balkrishna died in 1981 but the status of the family remained joint. It can be safely construed that Keshav would be the propositus and the status of the plaintiffs and defendant nos. 6 to 9 needs to be examined in juxtaposition with Keshav. Another reason for not treating Balkrishna as propositus is that the suit lands are ancestral and undivided joint family properties. Keshav died intestate.

24. Right under Section 22 of the Act is exercisable by heirs of Class I. If there are more than one deceased person dying intestate in the undivided family then the difficulty arises as to who would be the Class I heirs. There are number of factors which are required to be taken into consideration for recognizing the Class I heirs. Few parameters, albeit not exhaustive, can be laid down as follows:

- (i) The status of property and the family
- (ii) The time of death.
- (iii) Time as to when the partition opens for devolving the interest.
- (iv) *Inter se* relationship and the degree.
- (v) Manner in which the interest devolves as per Section 6 of the Act.
- (vi) If there is co-parcenary or birth right.

25. It is not made clear as to when Keshav died. He died intestate and it is assumed that on his death partition opens. The plaintiffs and defendant nos. 8 and 9 would inherit share of the deceased Balkrushna. They would fall in the category of sons of predeceased son, which is included in class-I. If the partition opens as per Section 6 of the Act, the plaintiffs are entitled to have 1/3rd share per strip along with defendant no. 6 and 7. The plaintiffs are the co-parceners having birth right and their status is akin to their uncles, defendant nos. 6 and 7. In my considered view that have a preferential right under Section 22 of the Act. Both Courts below have rightly recognized their right as contemplated under Section 22 of the Act.

26. Learned counsel for the appellants has referred to following judgments to buttress that preferential right under Section 22 is available for Class-I heirs only :

- (1) **Ashutosh Chaturvedi Vs. Prano Devi Alias Parani Devi & others; (2008) 15 Supreme Court Cases 610.**
- (2) **Pabitra Kumar Maity Vs. Shyamali Manna and others; AIR 2021 Cal 118.**
- (3) **State of Rajasthan Vs. Ajit Singh and others; 2025 SCC OnLine SC 1992.**
- (4) **Ganeshappa since dead by his L.Rs. and others Vs. Krishnamma and others; AIR 2005 Kar 160.**

27. The proposition laid in above authorities cannot be disputed. It is also observed in the matter of **Ashutosh Chaturvedi (supra)** that right of preference over property is a weak right. In the case at hand, the plaintiffs have made out a case that the suit lands are undivided joint family properties and they are Class I heirs. The judgments referred above will have little assistance to the appellants.

28. The learned counsel for the respondents has placed reliance on

judgment of Orissa High Court in the matter of **Benirani Ray Vs. Ashok Kumar Ghosh** in S.A. No. 199/1986, decided on 22.06.2009. I have considered paragraph no. 10 of the judgment. The learned Single Judge observed that the right under Section 22 would be of a co-sharer or co-heir. The term co-sharer or co-heir is too wide and that cannot be read into Section 22 of the Act, when specific preferential right is given to heirs specified in Class I of the schedule. Therefore, I am not being persuaded by the observations. The judgments of the Supreme Court in the matters of **Shyam Sunder and others Vs. Ram Kumar and another; (2001) 8 Supreme Court Cases 24** and **Suresh Prasad Singh Vs. Dulhin Phulkumari Devi and others; (2010) 6 Supreme Court Cases 441** are in respect of concerned local Acts of State legislature. In the present matter Section 22 of the Act is pressed into service. Hence, those judgments will be no assistance to the respondents.

29. The right has been accrued to the plaintiffs when they learnt about impugned sale transactions effected by defendant nos. 6 to 9 in favour of defendant nos. 1 to 5. My attention is adverted to cross-examination of D.W. 2 Haribhau, who admitted that the agreement to alienate part of the suit lands had taken place in presence of plaintiff Shyam and other persons. It is submitted that despite having knowledge, the plaintiffs did not propose to purchase the land. I have gone through written statement of the defendants-purchasers. No such plea was raised by them that before alienation, defendant nos. 6 to 9 offered their undivided share to plaintiffs and plaintiffs refused to purchase them. In the absence of any foundation in the written statement a stray admission referred above is inconsequential. No evidence is placed on record to make out a case that plaintiffs had opportunity to purchase the suit lands but they did not avail. Hence, the submission that plaintiffs are estopped from challenging the sale transaction is meritless.

**Extension of time to deposit consideration as contemplated by Order
XX Rule 14 of the Code of Civil Procedure :-**

30. It is permissible for the Court while passing decree in preemption suit to specify a day on or before which the purchase money shall be so paid, and direct the plaintiffs to pay purchase money with costs. Both Courts below acted within four corners of law in fixing 90 days period for paying purchase money as per Order XX Rule 14(1)(a) and (b), which is as follows:

“14. Decree in pre-emption suit-(1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall-

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) ...

(a) ...

(b) ...”

31. The Trial Court determined that plaintiffs are entitled to have preferential right if they deposit the self-same consideration amount which was part of impugned sale transactions within period of 90 days i.e. on or before 30.12.1992. Being aggrieved by the decree of Trial Court, First Appeal No. 657/1992 was preferred with Civil Application No. 5689/1992 in the High Court. High Court had granted stay to the execution of the decree of the Trial Court. Thereafter, appeal was transmitted to the District Court due to enhancement of the jurisdiction and the stay continued. Upon final adjudication by the Lower Appellate Court, the plaintiffs were given 90 days period for depositing the amount. I do not find that the lower Appellate

Court has extended any period for depositing the amount. As there was stay to the implementation and execution of decree of the Trial Court, during pendency of appeal the payment was suspended. The Appellate Court adopted the same course in granting time to deposit.

32. A reliance is placed on the judgment of **Sulleh Singh and others Vs. Sohan Lal and another; AIR 1975 Supreme Court 1957** by the respondents. In that case respondents had filed suit for preemption against the alienations made by the family members in favour of appellants. While decreeing the suit the Trial Court directed respondents-plaintiffs to deposit the amount on or before 01.04.1969. Being aggrieved by certain part of the decree, the respondents-plaintiffs had preferred appeal, which was decided in his favour. The appellants had preferred appeal before the High Court, which upheld the decree of Lower Appellate Court. Hence the appellants/vendee was before the Supreme Court. It was argued that respondents did not deposit amount within stipulated period and the suit was liable to be dismissed. It was accepted by the Supreme Court and appeal was allowed. In paragraph no. 15 of the judgment it is observed that if order to deposit preemption amount is stayed, then the suit can not be dismissed and Appellate Court can pass appropriate order. In the case in hand, the respondents had secured stay to the decree of the Trial Court. The suit cannot be dismissed and there is no extension of time to deposit amount.

Obligation as per Section 44 of the Transfer of Property Act :-

33. In a collateral proceeding arising out of Regular Civil Suit No. 908/1987 learned Single Judge in judgment passed in Second Appeal No. 829/2009 observed that the remedy of the purchaser of undivided share is to sue for general partition and seek possession of the share purchased by them. Though defendant nos. 1 to 5 purchased the suit lands, which were undivided shares of vendors in the year 1989 by distinct sale-deeds, till this date no endeavour has been made to seek partition. They are entitled to enforce partition as per Section 44 of the Transfer of Property Act. They are

not having separate possession in pursuance of the sale transactions. Hence, it cannot be said that they have perfected title and possession over the suit lands. There is no question of granting any protection under Section 44 of the Transfer of Property Act.

Declaration to set aside sale-deeds is not required :

34. The plaintiffs have prayed that they have preferential right and sale-deeds would be declared as void and ineffective. The conjoint reading of Section 22 of the Act and Order XX Rule 14 of CPC does not indicate any need for the plaintiffs to seek declaration for setting aside the sale-deeds. Once the consideration is determined by the Court and the plaintiffs are directed to deposited the same within stipulated period the interest gets acquired by the plaintiff on depositing the amount. What is contemplated by Order XX Rule 14(1)(b) is that on payment of purchase money the defendant shall deliver the possession to the plaintiff whose title thereto shall be deemed to have accrued from the date of such payment. In the present case, the possession is already with the plaintiffs. I am of the considered view that the interest will be acquired by the plaintiffs no sooner than the payment of purchase money is made by them.

35. The purport of not specifically requiring to seek any declaration of setting aside the sale transaction would be that the property remains to be undivided joint family property. The plaintiff has vested right which gets restored only on payment of purchase money. There is no need to issue any declaration of setting aside the sale-deeds. Both Courts below have rightly passed the decree.

Second Appeal No. 109/2014 :

36. The plaintiffs have preferred this appeal being aggrieved by the quantum of consideration and the finding of Lower Appellate Court in respect of fraud in selling out the suit lands. The plaintiffs have failed to

make out a case of fraud. Neither is there any adequate material on record to infer fraud. I find no substance in the submissions of the plaintiffs. The consideration fixed by both the Courts below cannot be faulted. I find that no substantial question of law is involved and Second Appeal is liable to be dismissed.

37. So far as Second Appeal No. 1705/2005 is concerned, the substantial questions of law formulated by this Court have been dealt with. I find no merit in the submissions of the appellants. Second Appeal is liable to be dismissed.

38. In sequitur of above discussion, I pass following order :

(i) Second Appeal No. 1705/2005 as well as Second Appeal No. 109/2014 are dismissed.

(ii) The common judgment and decree passed by the Lower Appellate Court on 30.07.2005 in Regular Civil Appeal No. 82/2001 stands confirmed with a modification that the plaintiff shall deposit the amount of purchase price prescribed in the decree with simple interest at the rate of 6% p.a. from 31.12.1992 within period of 90 days from today, if not paid earlier.

39. Pending Civil Application is disposed of.

(SHAILESH P. BRAHME, J.)

mkd/-