

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11402 OF 2025

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1. Atmaram Ganpati Hulwan
2. Pandurang Ganpati Hulwan
3. Abaso Ganpati Hulwan (deceased) Through
LRs. 3A. Kiran Abaso Hulwan
All R/at Vadgaon Haveli, Tal. Karad, Dist. Satara. ... Petitioners

Vs.

1. Nivas Bandu Hulwan
2. Shivaji Bandu Hulwan
Both R/at Vadgaon Haveli, Tal. Karad, Dist.
Satara. ... Respondents

.....

Mr. Kalpesh U. Patil for the Petitioners

Mr. Vaibhav Gaikwad a/w Samrat Hajare, Suraj Bhosale for the
Respondents

.....

CORAM : SHAILESH P BRAHME, J.

DATE : 25th AUGUST, 2026.

FINAL ORDER :

1. Heard both sides finally with their consent.

2. Being aggrieved by judgment and order dated 30.08.2025 passed by the learned District Judge-1, Karad in Misc. Civil Application No. 52 of 2024 granting temporary injunction, the petitioners who are the original defendants have preferred this writ petition. The respondents have filed

R.C.S. No.630 of 2020 for declaration and injunction against the petitioners.

3. It is claimed by the petitioners that suit land bearing Gat No. 2067 measuring 42 R was purchased by their father and father of the respondents who were siblings, vide Sale Deed dated 05.09.1986 from one Dhondi Sadu Jagtap. They are the co-owners and in possession of half of Western portion of the suit land. It is further contended that in the year 2004, there was amicable measurement and partition in the family and Western portion share was allotted to them.

4. The suit is being contested by the respondents. Though the land was purchased jointly, Ganpati, father of the petitioners' failed to pay his share of consideration. Entire land remained in possession of the respondents. The respondents' father developed the land and cultivated sugarcane in it. It is further contended that R.C.S. No. 166 of 1990 was filed by the petitioners' father for injunction. The application for temporary injunction was rejected and the suit was dismissed. Only the name of petitioners remained in the record of the suit land.

5. The respondents' Application at Exh.31 for temporary injunction was rejected on 23.10.2024. Being aggrieved, Misc. Civil Appeal No. 52 of 2024 was filed by them. By impugned judgment, Appeal was allowed

and order of injunction was passed in favour of the respondents restraining the petitioners from disturbing the peaceful possession of the respondents on the entire suit land.

6. Learned counsel for the petitioners submits that in the Sale Deed as well as Revenue Record, father's name Ganpati was mentioned and petitioners were the co-owners. Their possession was joint and injunction against the co-owners is unsustainable. It is further submitted that in the year 2004, they are allotted Western half portion of the suit land. It is submitted that suit is hopelessly barred by limitation and relief of declaration cannot be granted. The Appellate Court is stated to have committed perversity in granting injunction.

7. *Per contra*, learned counsel for the respondents Mr. Gaikwad submits that trial Court did not take into account prayers and the progress of R.C.S. No. 166 of 1990 as well as statement of Ganpati before the Revenue Authority admitting the possession of the respondents. The vital aspect has been taken into account by the lower Appellate Court. It is further submitted that the tonnage report of the sugarcane factory and the sugar bills would indicate possession of the respondents. It is submitted that the claim that petitioners are in possession of Western half portion of the suit land is totally unfounded.

8. At the outset, it needs to be mentioned that the trial Court while rejecting Application Exh.31 preferred by the respondents did not take into account vital aspect of the matter pertaining to the orders passed in R.C.S. No. 166 of 1990 and the reliefs claimed therein. The categorical statement of the petitioners' father Ganpati before the Revenue Authority is totally overlooked by the trial Court. However, the Appellate Court at sufficient length dealt with this aspect of the matter in reversing the order passed by the trial Court. The trial Court only considered the Revenue record and averments of the Sale Deed to hold that suit land is jointly owned and possessed by both the parties. The trial Court *ex facie* committed grave error of jurisdiction, which is rightly rectified by the Appellate Court.

9. I have gone through the amended plaint of R.C.S. No. 166 of 1990 which was filed by Ganpati for injunction initially. Application Exh.5 was filed for temporary injunction claiming that the petitioners' predecessor was in possession of Western side half portion of the suit land. Application Exh.5 was rejected which is further confirmed in Misc.Civil Appeal No. 41 of 2019 vide judgment dated 16.04.1991. It was not carried further. The plaint was amended seeking additional relief of possession of Western side half portion of the suit land. Considering the amended prayer, it is evident that the petitioners were not in possession

of the part of the suit land. The suit was not prosecuted diligently and it came to be abated vide order dated 11.09.1998. The Appellate Court has rightly held that the petitioners were not in possession of the Western half portion of the suit land.

10. The lower Appellate Court has also elaborately dealt with the statement of Ganpati made before the Revenue Authority which amounts to admission of possession of the respondents over entire suit land. The claim of the petitioners that there was settlement in the year 2004 and Western half portion of the suit land was allotted to them is uncorroborated. The Appellate Court has rightly recorded the findings against the petitioners.

11. My attention is adverted to the tonnage report of the sugar factory which records name of respondent no.1 against the suit land. Since 2016-2017 upto 2018-2019, various sugarcane purchase bills were issued by the sugar factory. There is considerable documentary evidence to indicate that the respondents actually cultivated the suit land. The Appellate Court is justified in granting injunction on the basis of prima facie case, possession and balance of convenience in favour of the respondents.

12. The respondents are found to be in possession of the suit land since

its purchase exclusively. Though Sale Deed records name of the petitioners' father, the possession is with the respondents. The exclusive possession of the respondents needs to be protected. This Court has even reservations for the claim of joint ownership. Its a matter of objective scrutiny before the trial Court. The objections of the petitioners regarding limitation and maintainability of the suit can very well be gone into during the course of trial.

13. I find that no case is made out by the petitioners. The Writ Petition is devoid of any substance. Hence, it is dismissed.

(SHAILESH P. BRAHME, J.)

14. After pronouncement of the order, learned counsel for the petitioner prays for continuation of interim relief for six weeks so as to enable the petitioners to approach the Apex Court. It is contended that after the judgment, its effect was suspended vide order dated 04.09.2025 which is in operation till today also.

15. Learned counsel for the respondent submits that despite decision in favour of the respondents by the lower Appellate Court, its execution is suspended. It is further submitted that the disadvantage is likely to be taken due to the continuation of the protection.

16. The judgment and order passed in M.C.A. No. 52 of 2024 was under suspension vide order dated 04.09.2025, which is still in operation. I deem it appropriate to continue the order of suspension for a period of four (04) weeks. It shall stand vacated without reference to the court after expiration of the period. It is made clear that continuation of the protection in favour of the petitioners after the impugned judgment and order, shall not create any equities in favour of either party.

(SHAILESH P. BRAHME, J.)