

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**901 CIVIL APPLICATION NO.2425 OF 2022
IN SA/833/2003**

**KRISHANDAS CHAGANLAL GUJARATHI DIED THR. LRS SHAMDAS
KRUSHANADAS GUJARATHI AND OTHERS
VERSUS
BALADEVDAS CHHAGANLAL GUJARATHI**

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Advocate for Applicants : Mr. Arvind K. Tiwari
Advocate for Respondent : Mr. A.G. Godhamgaonkar

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CORAM : MANGESH S. PATIL, J.

DATE : 24-03-2022

PER COURT :

. This is an application filed by the appellant, who is the original plaintiff, seeking temporary injunction as according to him, in spite of the Second Appeal having been admitted long back and awaiting final hearing, half of the suit property has been demolished and is being sought to be altered.

2. Learned advocate Mr. Godhamgaonkar for the respondent would submit that in spite of his attempt to communicate his client he is merely putting an excuse of non-availability of public transport to come down to Aurangabad.

3. Mr. Godhamgaonkar would further submit that the

courts below have concurrently held that there was a previous partition evidenced by a memorandum and there was no escape from the conclusion that the two brothers were separate by metes and bounds. He would further submit that instead of now passing any interim order, the Second Appeal itself may be heard and decided finally.

4. I have carefully gone through the record. The applicant / appellant has not succeeded in getting a partition. The courts below have concurred in referring to a memorandum of partition which demonstrates that both the brothers were separate. However, as has been noted in the order while admitting Second Appeal, their subsequent conduct *prima facie* belies the theory of previous partition. They had filed couple of suits jointly against the tenants by making a specific statement that they were the joint owners of the properties. The lower appellate court has apparently not discussed this subsequent conduct and by formulating a substantial question the Second Appeal was admitted.

5. If such is the state-of-affairs, neither of the party at this juncture can be allowed to change the property. A Copy of the photographs annexed to the Civil Application shows that some

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portion of the suit property has been demolished. Needless to state that since it is a dispute pertaining to partition, it would be appropriate that the parties maintain *status-quo* as regards the condition of the suit property as is obtaining today.

6. The Civil Application is allowed.

7. Both the sides shall maintain the condition of the suit property as is obtaining today till final disposal of the Second Appeal.

8. Final hearing is expedited.

(MANGESH S. PATIL)
JUDGE

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Gajanan