

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

WRIT PETITION NO.1177 OF 2021

MAROTI SONAJI KADAM AND ANOTHER  
VERSUS  
DEEPAK MAROTIRAO KADAM AND OTHERS

...

Advocate for Petitioners : Mr. Vikram Kadam  
Advocate for Respondent No. 1: Mr. M.D. Narwad

.....

**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 11<sup>th</sup> JULY, 2022**

**ORDER :**

1. This petition impugns the order dated 15.09.2018 passed by the Trial Court in Regular Civil Suit No. 33/2018, thereby rejecting application Exhibit-6 filed by the petitioner seeking interim injunction. This order is confirmed by the District Court in Civil Miscellaneous Appeal No. 83/2018.

2. The petitioners being parents of respondents No. 1 to 5 have filed said suit seeking partition and separate possession of the ancestral property. Along with the suit application Exhibit-6 is filed under Order XXXIX Rule 1 (c) of Code of Civil Procedure, seeking injunction against respondents from alienating lands Gut No. 229, admeasuring 1 Hectare 20R situated at village Mendhala (Kd.), Taluka- Ardhapur, District-

Nanded, and Gut No. 67, admeasuring 0 Hectare 80R, situated at village Wahedpur, Taluka- Ardhapur, District- Nanded. After hearing the parties, the Trial Court has rejected application Exhibit-6. The petitioners unsuccessfully challenged the order passed by the Trial Court by filing Civil Miscellaneous Appeal No. 83/2018 before the District Court. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for respondent No. 1. Though respondents No. 2 to 5 are served, none appears for them.

4. It appears from the record that the petitioners filed said suit in respect of five immovable properties. The present two properties in respect of which injunction, not to create third party interest is sought, are part of the properties of which partition is claimed. Admittedly, these properties stand in the name of respondent No. 1. It is further matter of record that respondent No. 1 has already filed counter claim in the said suit and injunction application filed by him is allowed, thereby directing the petitioners not to create third party interest in respect of properties Gut No. 229, Gut No. 67 and Gut No. 520, which respondent No. 1 claims to be his self acquired properties.

5. Perusal of sale deeds placed on record reveals that the properties were purchased and/or exchanged in the name of respondent No. 1. On that point of time, it is the contention of the petitioners that the respondent No. 1 was 19 years old and was taking education. Apart from that admittedly, the suit is for partition and separate possession and it would have been appropriate on the part of the Trial Court to grant injunction only to the extent of not to create third party interest and/or alienate the property. No prejudice is likely to be caused to the respondents if such injunction is granted.

6. The Trial Court has given much weightage to the fact that these two properties stand in the name of respondent No. 1. The interest of respondent No. 1 is already protected by the Trial Court, by granting injunction in his favour. In this view of the matter also, the Trial Court ought to have allowed the application Exhibit-6 filed by the petitioners. The Trial Court has failed to consider that in the partition suit it is specifically claimed by the petitioners that said property was purchased/exchanged in the name of respondent No. 1, when he was taking education. Prima facie case is made out by the petitioners, balance of convenience lies in their favour and irreparable loss would be caused if third

party interest is created by the respondents in the said suit property. In that view of the matter, the findings recorded by the Trial Court and confirmed by the Appellate Court are not sustainable and same are liable to be quashed and set aside. In the result, following order:-

**ORDER**

1. The writ petition is allowed in terms of prayer clause B.
2. The impugned order dated 15.09.2018, passed in Regular Civil Suit No. 33/2018, by learned Civil Judge, Junior Division, Ardhapur, and confirmed by order dated 07.07.2020, passed by Ad-hoc District Judge-1, Nanded, in Miscellaneous Civil Appeal No. 83/2018, are hereby quashed and set aside.
3. Application Exhibit-6 is allowed.
4. No costs.

**[NITIN B. SURYAWANSHI, J.]**