

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

**WRIT PETITION NO.3001 OF 2022**

Shri. Guruningappa Shivappa Bagli and Ors. ..Petitioners  
Versus  
Shri. Maleshappa Shivappa Bagli ..Respondent

Ms. Rati S. Sinhasane, for the Petitioners.  
Mr. Surel S. Shah i/by Swaroop M. Karade, for the Respondent.

**CORAM : NITIN W. SAMBRE, J.**

**DATE : 16<sup>th</sup> MARCH, 2022**

**PC.**

1. In a suit for preemption initiated by the respondent, both the Courts below vide order impugned have granted temporary injunction thereby restraining the petitioners. Petitioner No.1 happened to be the brother of respondent/plaintiff, who has created third party right in favour of petitioner Nos.2 to 4 vide sale-deed which is questioned in the suit on the legal bases of right on the plea of preemption.

2. It appears that the defence set up by the petitioners/defendants is that of response to the notice of preemption in oral and offer given by the petitioners claimed to have been not accepted by the respondent/plaintiff.

3. The fact remains that the petitioner No.1 and the respondent/plaintiff holds the property jointly and the petitioner No.1 appears to have sold his undivided share in the property.

4. The Court is also required to be sensitive to the fact there exist mutation entry in favour of the plaintiff which discloses the *prima facie* possession of the plaintiff over the suit property. As such, it can't be inferred that petitioner No.1 was in independent possession of the suit property.

5. All these issues have prevailed before the Court below for granting temporary injunction. The petitioner has failed to demonstrate that he was in possession of suit property independently as has not demolished the case of Respondent/Plaintiff.

6. However, the petitioner No.1 who happened to be defendant No.1, a joint family member of the plaintiff and who holds the property in question as a co-sharer ought not to have been enjoined by the impugned order.

7. That being so, the impugned order stands modified.

8. The injunction shall operate against defendant Nos.2 to 4.

9. The petition stands allowed in above terms.

10. However, this will not preclude the petitioners from moving before the Court below seeking modification of the injunction to the extent of working out equities between the petitioner No.1 and Plaintiff/Respondent.

[NITIN W. SAMBRE, J.]