

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

WRIT PETITION NO.310 OF 2022

**PRAMOD VASANTRAO BHOSALE AND OTHERS
VERSUS
JAGDISH VASANTRAO BHOSALE**

...

Mr. Pramod D. Patil, Advocate for the Petitioners.

Mr. A. S. Sawant, Advocate for Respondent.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 09th JANUARY, 2023.**

PER COURT:-

1. Heard the learned counsel appearing for the parties.
2. The petition impugns the order dated 14.09.2021 passed in Miscellaneous Civil Application No.94/2015 by the Appellate Court reversing the order of the Trial Court dated 13.10.2015, whereby the respondent's application for injunction was dismissed.
3. Learned counsel for the petitioners submits that the respondent who is uncle of the petitioners has filed suit bearing RCS No.124/2014 seeking permanent injunction against the petitioners on the strength of the gift deed dated 14.01.2014 alleged to be executed by the mother of the petitioners in favour of the respondent. The suit property bearing Gut No.76 is joint Hindu family property of the petitioners and the respondent. He would submit that in view of the fact that it is a joint Hindu family property, the mother of the petitioners did not have any right in the said property and the gift deed, if any, executed is

null and void. He would further urge that the respondent had not produced the gift deed which has been reflected in the findings of the Trail Court. As such, he would urge that the impugned order of Appellate Court reversing the findings of the Trial Court ought to be set aside.

4. Per contra, learned counsel for respondent submits that the finding of the Trial Court rejecting the application for injunction was based on the rejection of the revenue entry mutating the name of the respondent in the revenue records, which was subsequently reversed and the Appellate Court on the basis of the revenue records have come to a *prima facie* finding that the suit property is now in possession of the respondent which is reflected from the 7/12 extracts. He would further urge that he is limiting his right only in respect of the area admeasuring 3H 24 R, which has been gifted to him. He would further urge that by the impugned order the Trial Court was directed to decide the suit within one and half year from the date of the impugned order and the matter is now fixed for examination of the last witness of the defendants and at this stage the impugned order may not be interfered with.

5. I have considered the rival submissions of the parties.

6. Considering the fact that, the suit is now posted for examining the last witness of the defendants and thereafter, final arguments will be heard, which will lead to a final disposal of the proceeding, at this stage any observations made by this Court while deciding the present writ petition would prejudice both the parties. The Appellate Court on the basis of the 7/12 extracts

have come to *prima facie* finding of the possession of the respondent and considering the submission of the learned counsel for the respondent that he is restricting his right only in respect of the area gifted to him under the gift deed, at this stage, I am not inclined to interfere with the impugned order of injunction.

7. Writ Petition is accordingly dismissed.

(SHARMILA U. DESHMUKH)
JUDGE