



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.121 OF 2019
WITH
CIVIL APPLICATION NO.696 OF 2019
IN
APPEAL FROM ORDER NO.121 OF 2019

- 1] Jitendra Pandurang Chaudhari
Age: 34 Years, Occupation: Agriculturist
Residing at: Naygaon, Margvasti, Tal. Haveli,
Dist. Pune
- 2] Rahul Dattatray Kunjir
Age: 31 Years, Occupation: Agriculturist
Residing at: House No. 714,
Near Swagat Dhaba, Kunjirwadi,
Tal. Haveli, Dist. Pune - 412 201.
- 3] Sopan Gaikwad
Age: 30 Years, Occupation: Agriculturist
Residing at: 712, Kunjirwadi, Tal. Haveli,
Dist. Pune-412 201.

....Appellants

V/s.

- 1] Moreshwar Dinkar More
Age: 35 Years, Occupation: Service
- 2] Mangesh Dinkar More
Age: 29 Years, Occupation: Service
- 3] Indubai Dinkar More
Age: 63 Years, Occupation: Housewife
1 to 3 Residing at: Janata Vasahat, S. No. 102,
Vikas Tarun Mandal, Parvati Payatha .
Pune - 411 009

- 4] Yogita Navnath Nawade
Age: 37 Years, Occupation: Housewife
Residing at: 130, Dandekar Bridge,
Pune - 411 030.
- 5] Ashwini Navnath Kadu
Age: 31 Years, Occupation: Housewife
Residing at: Koshimghar, Tal. Velha, Dist. Pune.
- 6] Santosh Haribhau Kanchan
Age: 41 Years, Occupation: Business
Residing at: Saraf Bazar, Gul Aali,
Near Ram Mandir, Urali Kanchan,
Pune-411202.
- 7] Shankar Bapu More
Age: 60 Years, Occupation: Service
- 8] Yogesh Shankar More
Age: 34 Years, Occupation: Service
- 9] Bhagyesh Shankar More
Age: 41 Years, Occupation: Service
- 10] Suman Shankar More
Age: 56 Years, Occupation: Service
- 11] Shraddha Yogesh More
Age: 28 Years, Occupation: Service

6 to 11 residing at:
Koregaon Mul, Dasve Vasti, Gaonthan,
Kolte Vasti, Tal. Haveli, Dist. Pune-412 202.
- 12] Kalpana Dilip More
Age: 45 Years, Occupation: Service

- 13] Shrikant Dilip More
Age: 27 Years, Occupation: Service
- 14] Prashant Dilip More
Age: 25 Years, Occupation: Service
- 12 to 14 Residing at: 862, Siddhi Vinayak Colony,
Apte Society Road, Warje Malwadi, Pune - 411 058.
- 15] Ramesh Dagdu More
Age: 47 Years, Occupation: Service
- 16] Eknath Dagdu More
Age: 43 Years, Occupation: Service
- 17] Rahibai Dagdu More
Age: 67 Years, Occupation: Housewife
- 15 to 17 Residing at:
S. No. 102, Janata Vasahat, Near Maruti Mandir
Parvati Payatha, Pune - 411 009
- 18] Dhanaji Govardhan Kamble
Age: 39 Years, Occupation: Agriculturist
Residing at: Post Kadvasti, Koregaon Mul,
Tal. Haveli, Dist Pune-412 202.
- 19] Sayabai Prakash Kshirsagar
Age: 50 Years, Occupation: Agriculturist
Residing at: S. No. 59, Post Colony,
Tarawade Vasti, Opp. Police Station,
Mohammadwadi, Pune - 411 060.
- 20] Pandurang Ganpat Babar
Age: 48 Years, Occupation: Agriculturist
- 21] Dattatray Ganpat Babar
Age: 33 Years, Occupation: Agriculturist

20 and 21 Residing at: Usha-kaal Hsg. Soc.,
Shubham Apartment, Tarawade Vasti,
Opp. Police Station, Mohammadwadi,
Pune-411 060.

- 22] Lahu Lakshman Duchal
Age: 33 Years, Occupation: Agriculturist
Residing at: Utpannai Budruk, Upali Budruk,
Solapur-413 209.
- 23] Prabhakar Medhaji Gaikwad
Age: 40 Years, Occupation: Not Known
Residing at: S. No. 57/1, Shivneri Nagar, Lane No. 29,
Kondhwa Khurd, Pune-411 048.
- 24] Balaji Gangadhar Battulwar
Age: 32 Years, Occupation: Not Known
Residing at: 1, New Yesgi, Tal. Biloli,
Dist. Nanded-431710.
- 25] Vitthal Mukinda Salgar
Age: 37 Years, Occupation: Not Known
Residing at: Ashram Road, Gosavi Vasti,
Uralikanchan, Pue-412 202.
- 26] Pushpa Ramesh Runwal
Age: 61 Years, Occupation: Not Known
Residing at: Room No. 4, Mahavir Complex,
Ghugad Farm House, Ambegaon Budruk,
Pune - 411 046.
- 27] Aabasaheb Nagnath Rede
Age: 51 Years, Occupation: Agriculturist
Residing at: Post Kasarwadi, Tal. Barshi,
Dist. Solapur-413 001.
- 28] Usha Lakshman Gavane
Age: 47 Years, Occupation: Not Known
Residing at: 621, 4/B, Bibwewadi, Munjiri Hill,
Pune-411 037.

- 29] Ganesh Eknath Makar
Age: 26 Years, Occupation: Not Known
Residing at: Dattawadi, Bagde Mala, Uralikanchan,
Tal. Haveli, Dist. Pune-412 202.
- 30] Mayur Dattatray Chavan
Age: 21 Years, Occupation: Not Known
Residing at: Girme Vasti, Urali Kanchan,
Tal. Haveli, Dist. Pune-412 202.
- 31] Radha Babaso Bhagwat
Age: 34 Years, Occupation: Not Known
Residing at: Chandanwadi, Bori Bhadak,
Tal. Daund Dist. Pune-412 202.
- 32] Sunita Balasaheb Sagde
Age: 42 Years, Occupation: Not Known
Residing at: Bayfa Road, Urali Kanchan,
Ta, Haveli, Dist. Pune-412 202.
- 33] Chandrakant Govind Veer
Age: 44 Years, Occupation: Not Known
Residing at: Bhairavnath nagar, Ranwade Chawl,
Near Bhairavnath Mandir, Narhe,
Tal. Haveli, Dist. Pune-411 041.
- 34] Kamlakar Vikas Bhalerao
Age: 24 Years, Occupation: Not Known
Residing at: Tambe Vasti, Urali Kanchan,
Tal. Haveli, Dist. Pune-412 202.
- 35] Rohini Mangesh Gaikwad
Age: 35 Years, Occupation: Not Known
Residing at: House No. 612, Near Kalubai Mandir,
Ashtapur, Tal. Haveli, Dist. Pune.
- 36] Shakil Ahmad
Age: 34 Years, Occupation: Not Known

Residing at: Tupe Vasti, Urali Kanchan, Tal. Haveli,
Dist. Pune-412 202.

37] Dnyanraj Chandrakant Dalvi
Age: 54 Years, Occupation: Not Known

38] Rajaram Baburao Kolpe
Age: 62 Years, Occupation: Not Known

37 and 38 Residing at: Uralikanchan,
Tal. Haveli, Dist. Pune.

39] Shankar Tulshiram Kadam
Age: 41 Years, Occupation: Not Known
Residing at: Daund, Pune - 413 801.

40] Hiralal Guruprasad Kashyap
Age: 38 Years, Occupation: Not Known
Residing at: Parvati Paytha, Tal. Haveli,
Dist. Pune-411 009.

41] Mahesh Devji Tambe
Age: 36 Years, Occupation: Not Known
Residing at: Shivajinagar, Dist. Pune - 411 005.

42] Vishal Dhondiram Savne
Age: 37 Years, Occupation: Not Known
Residing at: Parvati Darshan, Pune - 411 009.

43] Rajendra Jaysingh Sonawane
Age: 41 Years, Occupation: Not Known
Residing at: Post Daund, Dist. Pune-413 801.

44] Dhanaji Govind Kamble
Age: 39 Years, Occupation: Not Known

45] Kishor Vinayak Jadhav
Age: 31 Years, Occupation: Not Known
44 and 45 Residing at: Koregaon Mul,
Tal. Haveli, Dist. Pune

- 46] Nilima Babasaheb Kamble
Age: 45 Years, Occupation: Not Known
Residing at: Uralikanchan,
Tal. Haveli, Dist. Pune - 412 202.
- 47] Kamal Lakshman Salunke
Age: 42 Years, Occupation: Not Known
Residing at: Sortapwadi, Tal. Haveli, Dist. Pune,
- 48] Aditya Lalchand Kanchan
Age: 22 Years, Occupation: Not Known
- 49] Lilavati Lalchand Kanchan
Age: 43 Years, Occupation: Agriculturist
- 48 and 49 Residing at: Uralikanchan,
Tal. Haveli, Dist. Pune.
- 50] Harshad Bandu Abhang
Age: 28 Years, Occupation: Not Known
Residing at: Kunjirwadi, Tal. Haveli,
Dist. Pune-412 201.
- 51] Suraj Raju Banjare
Age: 31 Years, Occupation: Not Known
Residing at: House No. 6,
Poona Club Servants' Quarters,
Bund Garden, Pune – 411 001.
- 52] Dilip Maruti Shendge
Age: 54 Years, Occupation: Not Known
Residing at: Kawdi Pat Toll Naka, Manjri Farm,
Pune-412 307.
- 53] Rajaram Tukaram Jadhav
Age: 43 Years, Occupation: Not Known
Residing at: Taakli Bhima,
Tal. Shirur, Pune-412 208

54] Satish Abhiman Duchal
Age 43 years, Occ. Not known
Residing at: Upalai Budruk,
Tal. Mhada, Dist. Solapur – 413 209.

55 Sunanda Dada Kad
Age 32 years, Occ. Agriculturist
Residing at Koregaon Mul,
Taluka Haveli, Dist. Pune.

....Respondents

...

WITH

APPEAL FROM ORDER (STAMP) NO.21532 OF 2022

Santosh Haribhau Kanchan
Age: 44 Years, Occupation: Business
Residing at: Saraf Bazar, Gul Aali,
Near Ram Mandir, Urali Kanchan,
Pune – 411202.

...Appellant

V/s.

- 1] Moreshwar Dinkar More
Age: 38 Years, Occupation: Service
- 2] Mangesh Dinkar More
Age: 32 Years, Occupation: Service
- 3] Indubai Dinkar More
Age: 66 Years, Occupation: Housewife
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Age: 60 Years, Occupation: Service

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7 to 10 residing at:
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Age: 54 Years, Occupation: Not Known
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- 52] Rajaram Tukaram Jadhav
Age: 43 Years, Occupation: Not Known
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Age 43 years, Occ. Not known
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Tal. Mhada, Dist. Solapur – 413 209.
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57] Sopan Gaikwad
Age: 30 Years, Occ: Agriculturist
Residing at: 712, Kunjirwadi,
Tal. Haveli, Dist. Pune-412 201.Respondents

Appearances:

Mr. Ram S. Apte, Senior Advocate i/b Mr. Siddharth C. Wakankar for the Appellants/Applicants in AO No.121 of 2019/CAA 696 of 2019.

Mr. Chaitanya Nikte i/b Mr. Hitanshu S. Jain for Appellant in AO (Stamp) No.21532 of 2022.

Mr. Jamil Shaikh i/b Mr. Ramiz Shaikh for Respondent Nos.1 to 5 in all matters.

CORAM: SANDEEP V. MARNE, J.

DATE : AUGUST 21, 2023.

JUDGMENT:

. Order dated 10 December 2018 passed by the Civil Judge Senior Division, Pune, allowing application for temporary injunction is the subject matter of challenge in the present Appeals.

2 Respondent Nos.1 to 5 have instituted Special Civil Suit No.1045 of 2018 in the Court of Civil Judge Senior Division, Pune, essentially seeking partition of the suit properties. As a consequence of relief for partition, various sale transactions by which some of the suit properties are alienated, have also been challenged in the suit. There are as many as 53 Defendants to the suit and numerous properties. However, for the

purpose of determining the validity of the impugned order of temporary injunction dated 10 December 2018, what is relevant is only one suit property bearing Gat No.97, village Koregaon Mul, taluka Haveli, District Pune. Also, only back to back two transactions in respect of land bearing Gat No. 97/2, being sale deed dated 4 April 2016 executed by Defendant Nos. 2 to 9 in favour of Defendant No.1 and the sale deed dated 1 November 2018 executed by Defendant No.1 in favour of Defendant Nos.13, 14 and 15 (Petitioners herein), are relevant.

3 By the order impugned in the present Appeal, the Trial Court has restrained Defendant Nos.13 to 15 from creating any third party interest over the land bearing Gat No.97 during pendency of the suit. Aggrieved by the order dated 10 December 2018, two appeals have been filed. Appeal from Order No. 121 of 2019 is filed by Defendant Nos. 13 to 15 and Appeal from Order (Stp) No. 21532 of 2022 has been filed by Defendant No. 1.

4 Considering the narrow controversy involved in the present Appeals, it is not necessary to narrate facts in detail. One Tukaram More allegedly had three sons, Bapu, Dagdu and Dinkar. Appellants dispute relationship of Dinkar as Tukaram's son. It is Plaintiff's case that various properties at village Dasve, Tal. Mulshi, District Pune are joint family properties. That Tukaram's son-Bapu More was the Karta of the joint family. Some of the properties of the joint family at village Dasve were acquired for construction of a Dam, the land at Gat No.97/2 admeasuring

2H 2R at Village Koregaon Mul, taluka Haveli, District Pune, came to be allotted in the name of Bapu More in the year 1986 as project affected person. It is Plaintiffs' case that even this land bearing Gat No.97/2 allotted in the name of Bapu More as project affected person is the joint family property and that there has been no partition of various joint family properties.

5 Plaintiffs are children and legal heirs of Dinkar More. They claim share in various suit properties including the property bearing Gat No.97/2. The legal heirs of Bapu More (Defendant Nos. 2 to 9) executed sale deed dated 4 April 2016 in respect of various properties including Gat No.97/2 in favour of Defendant No.1. Defendant No.1 in turn sold the property bearing Gat No.97/2 in favour of Defendant Nos.13 to 15 (Appellants) in the year 2018. Plaintiffs have accordingly instituted Special Civil Suit No.1045 of 2018 seeking partition of suit properties as well as setting up a challenge to various sale deeds. Plaintiffs filed application for temporary injunction *inter alia* to restrain Petitioners from creating third party rights in respect of the land bearing Gat No.97/2. When the application for interim injunction came up for hearing, a purshis was filed by Plaintiffs pressing the relief of temporary injunction only in respect of land bearing Gat No. 97/2 against Defendant Nos.13 to 15 (Appellants) while not pressing the same against rest of the Defendants. The application for temporary injunction was resisted by Defendant Nos. 13 to 15 (Appellants). Defendant No.1 assisted them in defending the application for temporary injunction. By order dated 10

December 2018, the Trial Court has proceeded to allow the application for temporary injunction and has restrained the Defendant Nos.13 to 15 (Appellants) from creating any third party interest over the suit property bearing Gat No.97/2 and from carrying out construction thereon. Defendant Nos. 13 to 15 (Appellants) have filed present Appeal challenging the order dated 10 December 2018.

6 Appearing for the Appellants, Mr. Apte the learned Senior Advocate would submit that Dinkar's relation with the family is in serious dispute. He would invite my attention to the responses filed by various Defendants to application for temporary injunction in which those Defendants specifically denied the assertion that Dinkar More is the son of Tukaram More or brother of Bapu More and Dagdu More. That since Dinkar's relationship with the More family is itself in dispute, no *prima facie* case can be said to have been made out for grant of any injunction. He would further submit that the property bearing Gat No.97/2 was allotted in the name of Bapu Tukaram More by the Collector vide order dated 20 December 1986 and for 29 long years, neither Dinkar nor his legal heirs (Plaintiffs) disputed allotment of the land in the name of Bapu Tukaram More alone. That the dispute was created only after sale deeds in question were executed in the years 2016 and 2018.

7 Mr. Apte would further invite my attention to the application for grant of temporary injunction filed in partition suit bearing Regular Civil Suit No. 888 of 2016 by Dinkar Tukaram More. He would submit that though injunction was sought to restrain Defendants therein from

alienating the suit properties (which included land at Gat No.97/2) no injunction has been granted in that Suit. That therefore Trial Court could not have granted any injunction in subsequently filed Special Civil Suit No.1045 of 2018. He would further submit that the second suit is in fact not maintainable in the light of pendency of first suit for very same purpose. That though the issue of maintainability of suit is not the subject matter of Appeal, the same would indicate atleast absence of any *prima facie* case in favour of Plaintiffs to claim any interim injunction.

8 Mr. Apte would further submit that the Plaintiffs selectively pressed injunction against the Appellants while not pressing any relief against other Defendants in respect of other suit properties. That such selective approach on the part of the Plaintiffs would indicate lack of *bonafides* thereby disentitling them from the equitable relief of temporary injunction. That the only document produced by Plaintiffs to prove relationship of Dinkar with Bapu is Gram Panchayat letter which is subsequently disowned by the Gram Panchayat itself. That in the order of allotment made in favour of Bapu, the land bearing Gat No.97/2 is shown to have been allotted in his personal capacity and not as a Karta of joint family. That the sale deed dated 4 April 2016 executed in favour of Defendant No.1 was after following due procedure and post obtaining an order for deletion of entry relating to new tenure and payment of nazrana. Lastly, Mr. Apte would contend that the balance of convenience lies against Plaintiffs, who did not raise any dispute regarding land bearing Gat No.97/2 for 29 long years. That the temporary injunction is

causing irreparable loss to Appellants and to subsequent transferees also. He would pray for setting aside the order dated 10 December 2018.

9 Mr. Nikte, the learned Counsel would appear on behalf of Appellant in Appeal (Stamp) No.2153 of 2022 (Defendant No.1). He would adopt the submissions canvassed by Mr. Apte. Additionally, he would submit that even if Dinkar is assumed to be the brother of Bapu, no material is placed on record to indicate that the land bearing Gat No.97/2 is a joint family property. On the contrary, the allotment order of 1986 proves beyond any iota of doubt that the land is self-acquired property of Bapu. He would also invite my attention to 7/12 extract in respect of acquired land at village Dasve to show that even the said land was in the sole name of Bapu Tukaram More without any entry to the effect that the same was joint family property. Mr. Nikte would also invite my attention to mutation entry No.2797, by which names of legal heirs of Bapu Tukaram More were mutated to land bearing Gat No.97/2 during the year 1999 by rejecting the objection raised by Dinkar. Lastly, Mr. Nikte would contend that there was gross delay on the part of Plaintiffs in claiming relief and in view of provisions of section 52 of the Transfer of Property Act, the Trial Court ought to have rejected the equitable relief of injunction.

10 Mr. Jamil Shaikh would appear on behalf of Respondent Nos.1 to 5 (Plaintiffs) and would support the order passed by the Trial Court. He would submit that the land bearing Gat No.97/2 was allotted in the name of Bapu Tukaram More in his capacity as Karta of joint family in lieu of

acquisition of the joint family property at village Dasve. That taking benefit of illiteracy of Dinkar, Bapu got his own name mutated to the record of rights of the acquired property, which resulted in allotment of alternate land exclusively in the name of Bapu. So far as the relationship of Dinkar being son of Tukaram and brother of Bapu and Dagdu is concerned, he would invite my attention to the application dated 10 January 2014 signed by various family members including Appellants in which they admit relationship of Dinkar as son of Tukaram and brother of Bapu. He would submit that the Trial Court has passed reasoned order and that no case is made out for interference by this Court. He would pray for dismissal of the Appeal.

11 Rival contentions of parties now fall for my consideration.

12 Appellants have challenged order granting limited injunction in favour of the Plaintiffs by which the Appellants have been restrained from creating any third party rights over the property bearing Gat No.97/2 by alienating, transferring or selling the same or from carrying out any construction thereon during pendency of the suit. The temporary injunction has been granted on 10 December 2018 and the said order continues to operate for the last about five years, without being varied in any manner by this Court.

13 For demonstrating that no *prima facie* case was made out by Plaintiffs for grant of interim injunction, Appellants have strenuously

argued two points. Firstly, that Dinkar is not the son of Tukaram, and therefore, not a member of joint family. Secondly, the property bearing Gat No.97/2 is not a joint family property, but a self-acquired property.

14 So far as the first point of dispute about relationship of Dinkar with the family is concerned, it is submitted that no evidence was produced by Plaintiffs to prove that Dinkar is Tukaram's son or Bapu's brother. It is contended that the relation is sought to be established on the basis of a solitary document, being certificate of Gram Panchayat, village Dasve, taluka Mulshi, District Pune issued on 24 July 1992 stating that Tukarm Vithal More died 40 years ago and he had four sons and two daughters including Dinkar Tukaram More. It is contended that Gram Panchayat does not have jurisdiction, power or authority to certify heirs of deceased Tukaram More. Realizing the said mistake, Gram Panchayat subsequently issued certificate dated 17 October 2018 clarifying that it does not have power to issue any certificate or information with regard to heirs of Late Tukaram Vithal More. It is contended that since the certificate dated 24 July 1992 is disowned by the Gram Panchayat, the solitary document sought to be produced by Plaintiffs in support of their claim of Dinkar being son of Tukaram and brother of Bapu is disproved. To counter this submission, the learned Counsel for Respondent Nos.1 to 5 (Plaintiffs) has placed reliance on letter dated 10 January 2014 signed by various members of More family signed by Ramesh Dagdu More, Eknath Dagdu More, Rahibai Dagdu More, Kalpana Dilip More, Shrikant Dilip More, Prashant Dilip More and Dinkar Tukaram More addressed to the

Tehsildar, Taluka Haveli, District Pune. The subject matter of the letter is regarding partition of land bearing Gat No.97/2. The application states that Bapu Tukaram More was Karta of joint family and the property bearing Gat No.97/2 is the joint family property. In that letter, there is a specific statement that the property was being jointly owned. The application further stated that Bapu, Dagdu and Dinkar are brothers. Thus in addition to the Gram Panchayat certificate, there appears to be some admission by other family members of More family about Dinkar being brother of Bapu and Dagdu. Interestingly, the application is signed by Kalpana Dilip More, Shirkant Dilip More and Prashant Dilip More who are children of Dilip Bapu More, who in turn is son of Bapu Tukaram More. *Prima facie* it appears that they had agreed for partition of Gat No.97/2 with land admeasuring 67.33 R being granted to Dinkar's share. The exact impact of the letter dated 10 January 2014 shall be examined by the Trial Court at the final hearing of the suit. However, so far as relationship of Dinkar with More family is concerned, there appears to be a *prima facie* admission on the part of the other family members that Dinkar is the brother of Bapu and Dagdu and son of Tukaram.

15 Though Mr. Apte has taken me through the Reply filed by the Defendant Nos.1 and 8 to the application for temporary injunction, I find that apart from making a vague denials about relationship of Dinkar with More family by those Defendants, there is no specific stand taken even in those replies that Dinkar is not the brother of Bapu and Dagdu or son of Tukaram. More interestingly, in the Written Statement filed by the

Appellants, no defence is taken that Dinkar is not the son of Tukaram. The Trial Court therefore cannot be faulted for recording a finding about absence of denial on part of Defendants about relation between the three brothers Bapu, Dagdu and Dinkar.

16 Coming to the next aspect of the nature of property at Gat No.97/2, it is common ground that the said land is allotted exclusively in the name of Bapu in his capacity as project affected person by way of order dated 26 December 1986 in lieu of acquisition of property at village Dasve, Taluka Mulshi, District Pune. It is Appellants' contention that the acquired property at village Dasve was Bapu's self-acquired property. However, no document is placed on record to indicate the manner in which Bapu acquired title in land at Village Dasve. Reliance is placed on Mutation Entry No.39 to show that the land at village Dasve was held by Bapu as "*jungle vahivat*" (forest possession). However, the said document would not *ipso facto* prove acquisition of right, title or interest by Bapu in those properties in his exclusive name. On the contrary, it is the case of the Plaintiffs that the acquired property was joint family property and therefore, the allotted land would also become joint family property. This is something which would be decided by the Trial Court at final hearing of the suit. However, for the purpose of deciding the application for temporary injunction, it appears that Appellants could not *prima facie* prove before the Trial Court that either the acquired property or the allotted property bearing Gat No.97/2 is a self-acquired property of Bapu.

17 Non grant of temporary injunction is RCS No. 888 of 2016 covering land bearing Gat No. 97/2 is highlighted by Appellants as a reason for denial of injunction in the present Suit. Firstly, it is nobody's case that the application for temporary injunction filed in Regular Civil Suit No.888 of 2016 is rejected. Secondly, Regular Civil Suit No.888 of 2016 has been instituted before purchase of land bearing Gat No.97/2 by Defendant Nos.13 to 15 (Appellants). Therefore, there was no question of seeking any restraint order against Defendant Nos.13 to 15 in that Suit. Thus pendency of application for temporary injunction in Regular Civil Suit No.888 of 2016 could not have been a valid ground for refusal of temporary injunction in the present Suit.

18 Reliance of Mr. Nikte on provisions of Section 52 of the Transfer of Property Act, 1882, far from assisting his case, actually militates against him. The Appellant in Appeal from Order (stamp) No.21532 of 2022 (Defendant No. 1) purchased the land bearing Gat No.97/2 after institution of Regular Civil Suit No.888 of 2016. He has further sold the same in favour of Defendant Nos.13 to 15 in the year 2018. In addition to transfer of some land forming part of Gat No.97/2 before filing of suit, Defendant Nos.13 to 15 are also accused of indulging in transfer transaction in breach of injunction order. Whether the accusation is factually correct or not is something which the Trial Court will decide in appropriate proceedings. Suffice it to hold at this juncture that there was an urgent need of preserving the property and avoiding further complications.

19 Faced with the position that *prima facie* case was made out by Plaintiffs for grant of interim injunction, Mr. Apte and Mr. Nikte have strenuously submitted before me that the balance of convenience was heavily tilted against Plaintiffs and in favour of Appellants. The sheet anchor of Appellants in this regard is passage of period of 29 years in raising dispute regarding nature of the property and claiming a share therein. It is submitted that the land bearing Gat No.97/2 was allotted exclusively in the name of Bapu Tukaram More in 1986 and that for the first time Plaintiffs claimed share therein in the year 2016 after noticing sale transactions. These submissions are sought to be belied by two documents placed on record. Firstly, Mutation Entry No.2797 was effected for the purpose of bringing on record names of legal heirs of Bapu Tukaram More on 6 January 1999. It appears that Dinkar Tukaram More raised objection to mutation of names of legal heirs of Bapu Tukaram More. The complaint of Dinkar was adjudicated on 4 October 2000 and it was decided to mutate the names of legal heirs of Bapu Tukaram More. This is the first document to indicate that Dinkar did object to mutation of names of legal heirs of Bapu alone in respect of land bearing Gat No.97/2. Furthermore letter dated 10 January 2014, to which reference is made earlier while deciding the issue of relationship of Dinkar with Bapu and Dagdu, indicating possible consent of legal heirs of Shankar Bapu More (Bapu's son) for partition of land bearing Gat No.97/2 by agreeing to allot a share therein to Dinkar. As observed above, the exact impact of the letter dated 10 January 2014 is something which the Trial Court would decide at the time of final hearing of the suit.

However, so far as the issue of balance of convenience is concerned it cannot be stated that Dinkar never objected treatment of land bearing Gat No.97/2 to be in exclusive ownership of Bapu or his legal heirs. The records, on the contrary do indicate that Dinkar always claimed share in the said property. It is therefore difficult to hold that Dinkar or his legal heirs whiled away time of 29 years before claiming a share in Gat No.97/2. *Prima facie* therefore estoppel or acquiescence cannot be set up against Plaintiff even for denial of equitable relief of temporary injunction.

20 Coming to the last aspect of irreparable loss, it is seen that the Trial Court has not granted any injunction with regard to possession. The land bearing Gat No.97/2 is purchased by Appellants in Appeal from Order No.121 of 2019 by way of sale deed dated 1 November 2018 from Defendant No.1, who is Appellant in Appeal from Order (Stamp) No.21532 of 2022. Defendant No.1 has purchased the land bearing Gat No.97/2 from legal heirs of Bapu Tukaram More by sale deed dated 4 April 2016. As observed earlier Dinkar had filed partition suit bearing Regular Civil Suit No.888 of 2016 seeking partition of various properties including land bearing Gat No.97/2. Atleast Appellants in Appeal from Order No.121 of 2019 appears to have purchased the land with full knowledge of pendency of partition suit bearing Regular Civil Suit No.888 of 2016. Whether the present suit would be maintainable in the light of filing of previous partition suit is something which the Trial Court would decide. So far Appellants have not been successful in seeking

rejection of Plaintiff in Regular Civil Suit No.1045 of 2018 on the non-maintainability thereof. Therefore, I need not go into the issue of maintainability of suit at this stage. As observed earlier, Appellants have not been able to *prima facie* demonstrate that the acquired land or allotted land was self-acquired property of Bapu. The Trial Court would finally decide the issue about the nature of property bearing Gat No.97/2. Till such decision, a reasonable restriction is imposed on the Appellants from alienating the land or creating third party rights or carrying out construction thereon. It also appears that Appellants in AO No.121 of 2019 are developers and have sold some portion of the land to third parties. In such circumstances, irreparable loss would have caused to the Plaintiffs if injunction was refused by the Trial Court.

21 I, therefore, do not find any error in the order dated 10 December 2018 passed by the Trial Court. Appeals being devoid of merits deserve to be dismissed. Both the Appeals are accordingly dismissed with no order as to costs. It is however clarified that the findings recorded herein are *prima facie* and are recorded for the limited purpose of examining whether Plaintiffs are entitled to temporary injunction. Needless to observe that the Trial Court shall not be influenced by those findings while finally deciding the Suit.

22 In view of the disposal of the Appeals, the Civil Application No.696 of 2019 also stands disposed of.

(SANDEEP V. MARNE, J.)